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1072

No. 2875

United States
Circuit Court of Appeals

For the Ninth Circuit. 1072

Transcript of Record.
(IN TWO VOLUMES.)

CHARLES H. MOYER, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, State of Colorado, CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Appellee.

VOLUME II.
(Pages 321 to 598, Inclusive.)

Upon Appeal from the United States District Court for the
District of Montana.

Filed

DEC 6 - 1916

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(Testimony of Ernest Mills.)

Q. Mr. Mills, is it not a fact that if a member does not wish—if a miner in any locality does not wish to become a member of the local, if there is a local [264] in that locality, that there is no legal means of compelling him to be a member?

Mr. GEAGAN.—We object to that as calling for a conclusion of the witness on a proposition of law, and not tending to elicit any facts.

The COURT.—I think the Court will take judicial notice there is no law compelling him.

The WITNESS.—By “a membership of several thousand strong” when I answered that the Federation was several thousand strong, or composed of several thousand, I meant several thousand members. I have a typewritten copy of my December report but have not got it here. I have a typewritten copy in the city. We issue printed quarterly reports to locals. I have not got a copy of the last report printed yet. It is just typewritten. The December reports are not printed yet. There is no special rule as to what time they should be printed. The secretary is to compile it and it is later on ordered printed and sent out to the local unions, parties interested. It is not a fact that the reason the same is not printed is that there is no money to print it.

Q. Is it not a fact that the Miners' Magazine is nothing more than a little hand-bill and pamphlet at the present time because of no funds to print it?

Mr. GEAGAN.—We object to this.

Q. (Continuing.) And that instead of issuing it in [265] appearances something after the appear-

(Testimony of Ernest Mills.)

ance of the Saturday Evening Post, once a week, that it only appears now once a month, and in that pamphlet form, because of lack of funds of the Federation?

Mr. GEAGAN.—We submit, if your honor please, that this is entirely objectionable, not tending to elicit any fact, or to the establishing or disestablishing the issues involved in the case at bar, and tending to encumber the record with irrelevant and immaterial matter; matter that we think is impertinent and scandalous under the rulings of this Court, and that it cannot aid nor assist this court in arriving at a decision with regard to the issues involved in the action as between the parties here. It is entirely improper cross-examination.

The COURT.—The objection will be sustained.

To which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—The charter presented here, the charter sent and a correct copy offered in evidence here, to all intents and purposes was intended to be a reissuance of the charter that was lost or destroyed on the 13th of June.

Q. Mr. Mills, is it not a fact that the charter received on or about May 15, 1893, was a copy of a state charter, only briefly changed to meet the requirements, and contains the names on the charter of the members of the [266] Butte Miners' Union at its organization; and is it not further a fact that you asked John Sheehan if he could get ten names—delegates of the Butte Miners' Union—if you could

(Testimony of Ernest Mills.)

get ten of the names that were on the other charter?

A. The original charter had the names of the charter committee printed on it. The body of the charter was exactly the same. The difference between the body of the charter said "The Western Federation of Miners of America," and later on the names of "America" was by action of the convention knocked off.

Q. Is it not a fact that at the time of the old charter there was no forfeiture clause of the kind that is contained in the second charter, the following—is it not a fact, Mr. Mills, that these words contained on this charter were not contained in the old charter: "It is agreed that should the aforesaid union withdraw or be dissolved" substantially, or forfeit its charter, then all property, money, books, and papers shall become the property of the Western Federation of Miners? A. That was in the original charter.

The WITNESS.—I know that, because I have carefully looked over copies of the charter issued at that time. I may have seen the charter of the Butte Miners' Union, the defendant here, but I never paid any particular attention to it. I have been a member of the Federation since 1899. The Federation was six years at least in existence before I [267] knew anything about it. I did not know that at the time of the organization of the Western Federation of Miners, the Butte Miners' Union, this defendant, was the only local miners' union that owned one dollar of property. I know nothing about its financial condition at that time.

(Testimony of Ernest Mills.)

Q. And you know nothing about the organization of the Federation or where it was organized or anything about it, prior to the time you mentioned, 1899? A. I have read the records.

I read the original minutes of the original meeting and they follow very closely. They are in Butte, and I now produce them. I did not say I knew the old charter and what was in it. I simply said I was drawing the inference from the fact that I looked over the copies of the charters at that time, and assumed the charter was the same. I was unable to place W. J. Weeks and Morris on the charter I issued.

Q. Do you know that W. J. Weeks was not on the old charter, and that he was not one of the charter—

The COURT.—The new charter contains these names?

Mr. BREEN.—The first charter.

The COURT.—And the new one has not?

Mr. BREEN.—No.

The COURT.—Then the fact stands admitted that the reason he did not put them there was not material.

The WITNESS.—I received the letter received in evidence and marked exhibit “C” from Mr. Lee, in which he mentioned [268] “in reply to your letter concerning the charter, we have received it and there is a little dispute about it being the same. Some of the members want a copy of the old charter from Helena, Montana. We have written there” and so on. I at no time received any communica-

(Testimony of Ernest Mills.)

tion from this defendant corporation that the charter was accepted.

Q. You never received a communication that the charter was accepted, did you?

A. That communication acknowledged the receipt of it.

Q. Received through the mail, didn't it?

A. Yes. I think it was registered and there was a register receipt, and I have got that, yes.

Q. But you know nothing about what Mr. Lee referred to about a little dispute and so on; you know nothing of that other than what is stated in the letter.

A. Other than what is stated in the letter.

I don't recall receiving any other correspondence pertaining to the charter. I would not recollect it as well as receiving this. This is brought before me, and if you produce something else I might recognize it.

Of those several thousand members that I referred to as being located in different states and territories, some are located in Colorado, and miners' union organizations members of the Federation at Cripple Creek, Leadville, and Pueblo, and St. Elmo, ever since my recollection and connection with the Federation.

Q. How much per capita tax did you receive in the [269] month of January?

Mr. HILTON.—We object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

(Testimony of Ernest Mills.)

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Q. Mr. Mills, you stated on direct examination that you, or that the Federation, speaking for the Federation, had brought suits and defended suits for the Butte Miners' Union. I don't just recall the wording of your answer. And that you had advanced money and contested suits in court, and brought suits and defendant suits.

Mr. GEAGAN.—We object to the question in the form it is put, as improper cross-examination, not based on any testimony of the witness in this particular incident; that the witness on direct examination did not testify as having brought suits.

Which objection was by the Court overruled, to which ruling the plaintiff then and there duly asked for and was allowed an exception.

A. They defended suits that were brought against the Butte Miners' Union and Western Federation of Miners in South Dakota.

The WITNESS.—The records of the suits I believe are here somewhere and they would be possibly the best evidence. The suit was brought by one Ryan to set aside the mortgage, [270] the Butte mortgage, and a claim that the Western Federation of Miners had against the Lead City Miners' Union, a corporation. The first suit was a suit brought by Ryan and others to set aside and make null and void the mortgage of the Butte Miners' Union of the Lead City Miners' Union Hall. That was defended

(Testimony of Ernest Mills.)

by the Western Federation of Miners, and judgment secured. Then later on there was some action by Ryan and others securing possession of some ten feet of the back of the lot on which the hall was, that had not been included in the original mortgage, and that was a suit brought by Ryan, and the court gave, the Federal Court, gave possession to the Butte Miners' Union and Western Federation of a territory of ten feet if I remember.

The COURT.—I don't think we need get the details of these suits. The only question in this suit, did the Federation render assistance to the Butte Union? We don't need the details.

The WITNESS.—In the suit I mentioned the Butte Miners' Union did not pay all the expenses and employ counsel and furnish the witnesses.

Q. Is it not a fact that the same cause of action which was a joint action brought because the Federation had a second mortgage for about five thousand dollars and the Butte Miners' Union twenty-five thousand dollars and the interest?

Mr. GEAGAN.—We object to the question on the ground and [271] for the reason it calls for the conclusion of the witness, and speaks of a proposition of law, whether or not the action was joint.

The COURT.—The only question is whether the Federation aided the Union in the suit.

The WITNESS.—I think the first suit was to set aside the Butte Miners' Union mortgage. The Western Federation of Miners defended the Butte Miners' Union in that suit, and put in a counterclaim

(Testimony of Ernest Mills.)

other than the mortgage. The Federation proved it was a counterclaim; and the Butte Miners' Union made the president its trustee to act for it. Mr. Moyer did not take that position himself without the knowledge of the Butte Miners' Union, I don't think. I understand you have brought an action against Mr. Moyer and the sheriff to set aside that assumption of trusteeship, and it is pending now in the Federal Court. That was all the litigation I had in mind, the only cause of action I referred to, in that December trial.

Q. Mr. Mills, is it not a fact that on the contrary the Butte Miners' Union out of its own private funds, employed counsel for the defense of the officers of the Western Federation of Miners, out of its own private funds?

A. I have no knowledge of that.

Mr. GEAGAN.—We object to that as improper cross-examination, and not tending to prove or disprove any issue involved. It is a matter between the union individuals [272] and not between the Federation as a whole and the union. It is improper cross-examination.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—I am a member of local of Greenwood, British Columbia, a local in existence there now, paying per capita tax. I was in Butte last winter during the hearing of the case that was on trial in the District Court here.

(Testimony of Ernest Mills.)

Q. Was that Greenwood local paying taxes then?

A. Yes, sir.

Mr. GEAGAN.—We object to that as irrelevant and immaterial, and not within the issues of the case at bar.

The COURT.—Sustained.

The WITNESS.—I was familiar with the constitution of the Western Federation of Miners, and have been for a number of years.

Q. And during the time that you have been familiar with the Constitution of the Western Federation of Miners, is there any clause or section, chapter or article, that would permit or that claims the property of any local withdrawing from the Federation, or would permit of a claim of the property?

Mr. GEAGAN.—We object to that, if your Honor please, as irrelevant and immaterial, and improper cross-examination, [273] and calling for secondary evidence, when the constitution itself would be the best evidence.

Which objection was sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—The document which you now hand me is the 1912 constitution of the Western Federation of Miners, as revised in 1912, and it is the constitution that contains the laws of the Federation up until 1914, or rather until the fall of 1914, when it was revised. I have not got those amendments with me; have not a copy of the revised con-

(Testimony of Ernest Mills.)

stitution with me, but I will bring one up later, this afternoon.

Q. Mr. Mills, the document that I offered you, defendant's 1 for identification, contains all of the laws of the organization known as the Western Federation of Miners, all of the laws governing it up to the convention of August, 1914?

Mr. GEAGAN.—To which we object as improper cross-examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

Q. That is, the last constitution and by-laws; contains all of them up to last Christmas?

A. Yes, other than the charter, rituals, and so forth. [274]

Q. And when you refer to rituals you mean secret work of the organization?

A. There is a ritual later known as the secret work.

Redirect Examination by Mr. HILTON.

The WITNESS.—I have been familiar with, as secretary of the organization, with all of the charters that have been issued, from the time of the organization of the Western Federation of Miners.

Q. Has there ever been to your knowledge any charter issued by the organization that did not contain the same identical language as contained in the charter as you have said was issued to the Butte local Miners' Union No. 1, 1914?

Mr. BREEN.—We object as incompetent, irrelevant and immaterial in this case, for the reason that,

(Testimony of Ernest Mills.)

according to the testimony of the witness he was not a member until the year 1899. Is that correct?

A. Yes.

Mr. BREEN.—(Continuing.) 1899, when the Western Federation of Miners had been in existence then a period of more than six years. It would be hearsay as far as he was concerned.

The COURT.—You may answer. The Court will always take into consideration the extent of his knowledge. [275]

To which ruling the defendant then and there duly asked for and was allowed an exception.

A. Reading the bodies of the charter was identical.

Recross-examination by Mr. BREEN.

The WITNESS.—According to the records, the first charter was drafted by a committee appointed by the original convention, and from that there has been no change in the charter, other than by order of the convention at one time, the words, “of America,” were left out. The style of the charter has been changed by order of the executive board, that is, just the make up of it.

(Witness excused.) [276]

Testimony of William E. Walsh, for Plaintiffs.

WILLIAM E. WALSH, a witness called on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—My name is William Walsh, and I reside in Butte City, Montana, Silver Bow

(Testimony of William E. Walsh.)

County. I was a member of the Western Federation of Miners from its inception until about seven years ago. By its inception I mean when it was first organized. It was organized in the old Miners' Union Hall in Butte. I was familiar with the form of the first charters issued by the Western Federation of Miners to the defendant organization and different locals. The Butte Miners' Union No. 1 was one of the first locals in the Federation, and it was through the Butte Miners' Union that the call was issued. I have examined the signatures to the document you have handed me, and I know both of those gentlemen. They are all dead now. When I say I know both of those gentlemen, I mean, John Gilligan and W. J. Weeks, and those are their signatures as I recollect. They are both deceased now. I am familiar with what this document contains and with the document itself and the form of it. It is a charter of the Western Federation of Miners.

(Document marked Plaintiffs' Exhibit "D" for identification.)

Mr. GEAGAN.—We offer this document in evidence at the [277] present time.

Mr. BREEN.—For what purpose?

Mr. GEAGAN.—For the purpose of showing that this form of charter is the original form of charter issued by the Western Federation of Miners to the different locals, and that Butte was one of the first locals in that Federation and that the charter which

was issued to Aspen Local Union No. 6, which was one of the unions, is the same in the nature of the contract as the charter that was issued to the Butte Miners' Union.

Mr. BREEN.—We object to it, if your Honor please, for the reason that it already appears in evidence from the testimony of Mr. Mills, that the Butte Miners' Union had a different form of charter to the one now attempted to be offered in evidence; that it contained the names of the charter members of the organization and that this contains nothing of the kind. The defendant objects to the offer in evidence of Plaintiffs' Exhibit "D" for identification for the reason that the same is incompetent, irrelevant and immaterial; for the reason that it is a charter issued or purported to have been issued to Aspen Miners' Union No. 6, and is not according to the evidence a copy or duplicate of the charter that was accepted by the Butte Miners' Union No. 1, The Butte Miners' Union, a corporation, at the time of its acceptance, in this, that it did not contain and does not contain any list of the charter members [278] that was on the original charter.

The COURT.—The objection is overruled. It may be received in evidence.

To which ruling of the Court the defendant then and there duly asked for and was allowed an exception.

Which document is as follows:

(Testimony of William E. Walsh.)

Plaintiffs' Exhibit "D"—Charter of Western Federation of Miners.

WESTERN FEDERATION OF MINERS OF AMERICA.

CHARTER.

KNOW YE, ALL MEN BY THESE PRESENTS, That acting under the authority vested in us by the laws of the above-named organization, we, the undersigned, do hereby grant this Charter to a body of miners who are to be hereafter known and designated as the ASPEN MINERS' UNION NO. 6. To be held by them or their successors; and the aforesaid Union being properly installed, is hereby authorized and empowered to transact business and initiate into its membership any person or persons lawfully proposed and elected in accordance with the Constitution, Rules and Regulations of the Western Federation of Miners of America. It is hereby agreed in the acceptance of this Charter that the aforesaid Union shall conform to the Constitution, Rules and Regulations, and in default thereof, this Charter may be revoked and the Union suspended from all rights and benefits according to the laws of the Western Federation of Miners; and, further, it is agreed, that should the aforesaid Union withdraw or be [279] dissolved, suspended or forfeit this Charter, then all property, monies, books and papers shall become the property of the Western Federation of Miners.

In consideration of the due and faithful performance of the foregoing stipulations, the Western Fed-

(Testimony of William E. Walsh.)

eration of Miners do hereby bind themselves to sustain said ASPEN MINERS' UNION, NO. 6, in the exercise of all rights, privileges and benefits as a local Union under its protection.

IN WITNESS WHEREOF, we have subscribed our names and affixed our Seal of the Western Federation of Miners, this 16th day of June, 1893.

JOHN GILLIGAN,

President.

W. J. WEEKS,

Secretary-Treasurer.

T. J. McLENNAN,

STEPHEN NICHOLAS,

WILLIAM CUNNINGHAM,

BART MALLOY,

Traitor. J. F. POYNTON.

The WITNESS.—In 1893 Mr. John Gilligan was president of the Western Federation of Miners, and Mr. W. J. Weeks was secretary-treasurer. I know all of those men who are named at the bottom of this charter, William Cunningham, Bart Malloy, T. J. McLennan, and Stephen Nicholas, and Joe Poynton. He went over into Idaho and got into some dispute over there. They were the committee of officers, of the first officers of the Western Federation of Miners, and that is how their names come to be on the bottom of this charter. At one time I was an officer of the Western Federation of [280] Miners, a member of the executive board, and acted secretary-treasurer for a few months, and as an officer of the Western Federation of Miners I issued several charters and signed them. They were identical with the

(Testimony of William E. Walsh.)

charter which you have just exhibited to me; the same charter. I was familiar with the Butte Miners' Union charter, that is the charter from the Western Federation, and it was identically the same in terms to the charter that you have exhibited to me.

Cross-examination by Mr. BREEN.

The WITNESS.—I was not a delegate from the Butte Miners' Union, the defendant here, to the first convention of the Western Federation of Miners. I was at the meeting of the Butte Miners' Union during the session of the convention in Miners' Union Hall when they made their report. It is a long time ago and I don't know that I could recall any of the proceedings of that meeting to mind now.

Q. Do you recall the inquiry being made or any inquiry being made by the Miners' Union, the Butte Miners' Union, as to what effect becoming a member of the Western Federation of Miners that was organized would have on its property and effects?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, not within the issues of this case, not having been raised by the pleadings, and that the contract [281] itself is the best evidence of the intent and purposes, and it is improper cross-examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I cannot recall any at this time.

The WITNESS.—I recall a motion being made to become a local of the Federation; I recall that such

(Testimony of William E. Walsh.)

action was taken at that time, but I don't know that I could state who made the motion.

Q. Mr. Walsh, do you recall a discussion at the time as to what effect becoming a member would have on the property of the Butte Miners' Union?

A. All that I can recall is that it was discussed there for several meetings, and for six months prior to the organization, the features of going into this Federation, but I could not recall at this time what, or state positively anything in regard to who made the motion or what the discussion was outside of a general discussion leading up to the organization and its perfection.

Q. Do you recall that at that time the Butte Miners' Union was possessed of approximately sixty thousand dollars in the bank, or some large sum, owned its property and had a mortgage on some Coeur d'Alene property and in the Granite Mountain Hall, a large amount of property?

Mr. GEAGAN.—We object to that as immaterial, and it [282] can only be proper for the purpose of testing his recollection.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Well, I know it owned its own property, but the exact amount of money in the bank at that time, I don't know that I could state positively.

Q. And none of this property at that time was accumulated by any act of the Federation, was it, Mr. Walsh?

(Testimony of William E. Walsh.)

Mr. GEAGAN.—We object to that as improper cross-examination.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

(Witness excused.) [283]

Testimony of James J. Maher, for Plaintiffs.

JAMES J. MAHER, a witness called on behalf of plaintiffs, being duly sworn, testified as follows:

Direct Examination by Mr. HILTON.

The WITNESS.—My name is James J. Maher, and I have resided in Butte for twenty-nine years. From September 1st, 1896, to 1901, I was identified with the Western Federation of Miners, a labor organization, and during that time a member of the Butte Miners' Union, and occupied during that time the office of secretary-treasurer of the Western Federation of Miners. In the line of my duties as secretary-treasurer and in such capacity I issued charters. This is my signature to the document which you now hand me.

Q. Was this charter executed and issued by you as secretary-treasurer of the Western Federation of Miners?

Mr. BREEN.—We object as incompetent, irrelevant and immaterial for any purposes in this case, until it is shown that this charter is a duplicate of the Butte Miners' Union.

Which objection was by the Court overruled, to which ruling the defendant then and there duly asked for and was allowed an exception.

(Testimony of James J. Maher.)

A. Yes, sir.

Mr. HILTON.—I offer this in evidence. [284]

Mr. BREEN.—We object, if your Honor please, as incompetent, irrelevant and immaterial for any purposes whatever in this case, not proving or tending to prove that this is a facsimile of the charter of the Butte Miners' Union, and not being even a facsimile of the charter heretofore offered, and being of much later date than the charter alleged to have been tendered and accepted by the Butte Miners' Union of May 15, 1893, this being September 29, 1897, several years after, and it is not shown that this charter is a duplicate of the charter referred to as the charter possessed by the Butte Miners' Union, or accepted at the first of the organization of the Western Federation of Miners.

Which objection was, by the Court, overruled, to which ruling the defendant then and there duly asked for and was allowed an exception.

Which said document was marked Plaintiffs' Exhibit "E," and is as follows:

Plaintiff's Exhibit "E"—Charter Issued by Western Federation of Miners of America to Butte Mill and Smeltermen's Union, No. 74.

**WESTERN FEDERATION OF MINERS OF
AMERICA.
CHARTER.**

KNOW YE, ALL MEN BY THESE PRESENTS, That acting under the authority vested in us by the laws of the above-named organization, we, the undersigned, do hereby grant this Charter to a

body of Smeltermen who are to be hereafter known and designated as the BUTTE MILL AND SMELTERMEN'S UNION, No. 74. [285] To be held by them or their successors: And the aforesaid union being properly installed, is hereby authorized and empowered to transact business and initiate into its membership any person or persons lawfully proposed and elected in accordance with the Constitution, Rules and Regulations of the Western Federation of Miners of America. It is hereby agreed in the acceptance of this Charter that the aforesaid union shall conform to the Constitution, Rules and Regulations, and in default thereof, this Charter may be revoked and the Union suspended from all rights and benefits according to the laws of the Western Federation of Miners; and, further, it is agreed that should the aforesaid Union withdraw or be dissolved, suspended or forfeit this Charter, then all property, monies, books and papers shall become the property of the Western Federation of Miners.

In consideration of the due and faithful performance of the foregoing stipulations, the Western Federation of Miners do hereby bind themselves to sustain said Butte Mill and Smeltermen's Union, No. 74, in the exercise of all rights, privileges and benefits as a Local Union under its protection.

IN WITNESS WHEREOF, we have subscribed our names and affixed our Seal of the Western Federation of Miners, this 29th day of September, 1897.

[Seal] EDWARD BOYCE,

President.

JAMES MAHER,

Secretary-Treasurer. [286]

(Testimony of James J. Maher.)

The WITNESS.—I never issued a charter in the form of this charter, Plaintiffs' Exhibit "D" with these names on, because before the 1894 convention these names were taken off and at the 1896 convention the words "of America" *was* taken off. In all other respects the charter was never changed. We issued charters in the form of this one marked Plaintiffs' Exhibit "B," a long time ago. They were all the same with respect to the directorial board. A long time ago all of the charters were just the same and never were changed. I saw the original charter issued to the Butte Miners' Union No. 1 hanging on the wall for a number of years, and it was identical with the Aspen charter, not the last one, but the Aspen charter, the same as that.

Cross-examination by Mr. BREEN.

The WITNESS.—The Aspen charter was one of the first charters. I saw the charter of the Butte Miners' Union No. 1 hanging on the wall, but I don't think I ever read it.

(Witness excused.) [287]

**Testimony of Charles E. Mahoney, for Plaintiffs
(Recalled).**

CHARLES E. MAHONEY, a witness heretofore on the stand, being recalled, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—I am the same Charles E. Mahoney who was a witness in this case previously, but I was not cross-examined.

Mr. GEAGAN.—We now submit Mr. Mahoney for cross-examination.

(Testimony of Charles E. Mahoney.)

Cross-examination by Mr. BREEN.

The WITNESS.—I stated that I was vice-president of the Western Federation of Miners, and I have been such since 1906. Prior to that time I was a member of the executive board. Those offices carry with them a salary. I went on the executive board in December, 1904.

Q. And the salary I believe is seven dollars and fifty cents a day and railroad expenses?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, not within the issues of this case, and improper cross-examination.

Mr. BREEN.—It shows the interest of this witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception. [288]

A. No, sir.

The WITNESS.—I did not so testify in a hearing had before Judge McClernan last winter in the presence of Judge McClernan, Frank Riley, yourself and a number of others in the courtroom. My salary is five dollars a day and my expense account is two and a half a day. I also get my railroad fare in addition to that.

Q. And that has been going on for how many years?

Mr. GEAGAN.—We object to that as irrelevant and immaterial.

The COURT.—Yes, you have developed his interest.

(Testimony of Charles E. Mahoney.)

The WITNESS.—I am a member of the Western Federation of Miners, and of the Butte Miners' Union Local, having been such member of the Butte Miners' Union since 1912. I am not a member of the Butte Miners' Union that you purport to represent, but I am of the Butte Miners' Union of Butte, Montana, of the Western Federation of Miners. I am not a citizen of Butte at the present time. I am a member of an organization claiming to exist in Butte and I reside in Denver, that is where my home is.

I have testified as to the citizenship of Mr. Moyer. I don't know positively as to what local he is a member. I don't recall testifying that he was a member at large; don't remember of testifying to that a year ago. I was a witness in the case, but at this time I do not recall being asked that question. I answered at that time [289] that I did not know what local he was a member of. I am not positive. If my memory was refreshed by producing the record referred to I would not say that was not correct, and it might be at that time without me being positive of it now. Membership is changed from one local to another at times. I don't know whether Mr. Moyer has changed to any local or not.

Q. You do know that there is no such thing as a member at large provided for by the Constitution, don't you?

Mr. GEAGAN.—We object to that as improper cross-examination, irrelevant and immaterial.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked

(Testimony of Charles E. Mahoney.)

for and were allowed an exception.

A. A union at large is the same as any other local; it bears the same relation to the Western Federation of Miners; is comprised of men who may join it and not be assessable to other local unions.

This little blue book which you show me is the Constitution and Laws of the Western Federation of Miners. It is the last constitution adopted by referendum vote of the membership.

Document marked Defendant's 2 for identification.

Q. Will you examine Defendant's Exhibit 2 for identification, and show us where there is any provision in it providing for either a member at large or a local at large? [290]

Mr. GEAGAN.—We object to that as improper cross-examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Section 1 of Article 1 provides that the organization, the local union, pay per capita tax to the entire organization or the Western Federation of Miners. The Union at large has been in existence for a great many years.

Q. Call our attention to it. Tell us that paragraph. Show us the section.

A. It assumes the same relation to the international organization as any other local union.

Q. I would ask that the witness be requested to answer the question.

(Testimony of Charles E. Mahoney.)

The COURT.—I understood the witness was reading from the document.

Mr. BREEN.—No, he is not reading anything.

The COURT.—Well, if you can, point out anything in the exhibit in your hand providing for membership at large or a union at large.

A. I have answered the question, your Honor, that it bears the same relation as any other local union.

The COURT.—No, you are asked to point out something in relation to it in the constitution and by-laws.

A. There is nothing in the constitution and by-laws [291] only the issuance of charters to local unions. It does not specify the Miners' Union or mill-men's union, or engineers', or pump-men's union, or surface-men's union, but it says the local union has to pay a per capita tax. The union at large bears the same relation to the Western Federation of Miners as to other local unions and pays their per capita tax in the same way.

Mr. BREEN.—We now ask to strike out that portion of the answer relating to the union at large, as not being responsive, and we are asking that he show us by what authority there is such a thing.

The COURT.—No, you asked him to show you from the Constitution and he has told you that there is nothing there relating to a union at large. The proof relating to a union at large, may be stricken; it is not responsive. He has answered your question fully.

Q. Well, you cannot show us anything, a clause, sentence, or section of this exhibit, any such provision

(Testimony of Charles E. Mahoney.)

as provides for this membership at large or a local at large?

Mr. HILTON.—He has answered that question.

The COURT.—I think so.

The WITNESS.—I am one of the plaintiffs in this action and have set up a claim of ownership to this property as specified.

Q. And can you state by this exhibit marked for identification [292] Defendant's Exhibit 2, and show us any clause, section or sentence providing that on the withdrawal of any local organization its property becomes forfeited to the general organization known as the Western Federation of Miners?

Mr. GEAGAN.—We object to that if your Honor please, as improper cross-examination, and irrelevant and immaterial at the present time, the charter contract being the contract relied upon.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Redirect Examination by Mr. GEAGAN.

Q. Mr. Breen interrogated you in relation to the union at large. What is the union at large in the Western Federation of Miners?

Mr. BREEN.—If your Honor please, we object to that question on the ground it is incompetent, irrelevant and immaterial for any purpose. There is nothing in the constitution or by-laws or any charter showing the existence of anything of the kind.

The COURT.—As a matter of fact there is no constitution or by-laws in evidence yet. He may answer

(Testimony of Charles E. Mahoney.)

the question and if not entitled to any weight or consideration it will [293] be given none by the Court. The objection is overruled.

To which ruling of the Court defendant then and there duly asked for and was allowed an exception.

A. The union at large in the Western Federation of Miners bears the same relation as any other local union to the Western Federation of Miners. It is comprised of men who are occupied in a way that they do not come directly in the jurisdiction of any local union, many of them employed at mining, construction of tunnels, and so forth. And men who so continue their membership, not as active members, or any man that is employed not directly in the jurisdiction of the local union, may carry his membership in the union at large bearing the same relation to the International organization as any other local union.

The WITNESS.—He pays the same dues and per capita tax as other members of the Federation, members of the different local unions, like Butte Miners' Union and Aspen Miners' Union, or the Leadville Miners' Union. When I say he bears the same relationship as any other local union I mean so far as paying dues and receiving benefits and all of that.

Recross Examination by Mr. BREEN.

The WITNESS.—The headquarters of the union at large is located at Denver, Colorado. It is not for the benefit [294] of those who have no vote or vocation as members, to draw salaries. They are members of local unions. There is one local union

(Testimony of Charles E. Mahoney.)

at large, and that is the one at Denver, Colorado. That is the one I referred to. If I went to work at Anaconda, Montana, I would have to transfer my membership—if a member at large went to work at Anaconda he would have to transfer. He could be a member and not be within the jurisdiction of, we will say, the local Anaconda, if he is not working in the jurisdiction of any other local, and could be paying his dues for ten years if he wants to without even seeing the place.

(Witness excused.) [295]

Testimony of Ernest Mills, for Plaintiff (Recalled).

ERNEST MILLS, a witness heretofore on the stand, being recalled by plaintiff, testified as follows:

Mr. GEAGAN.—Mr. Mills was under cross-examination and Mr. Breen asked to have him recalled.

Cross-examination by Mr. BREEN.

The WITNESS.—Defendant's Exhibit 2 which you hand me is the Constitution of the present day with all the different amendments. I have no correspondence in connection with the payment of the bill of Mr. Shea, or the sending of Mr. Shea to Philadelphia, but with talking with Mr. Lowney he refreshed my memory on the incident. Mr. Moyer wired the Butte Miners' Union asking them to advance Shea funds to go to Philadelphia with, as a delegate to attend the American Federation of Labor, and we would allow the same on their account, as they had some indebtedness, the sum of three thousand nine hundred dollars, to the Federation. They

(Testimony of Ernest Mills.)

owed the Federation the sum of three thousand nine hundred dollars and it was to apply on their account.

This telegram which you hand me I sent.

Mr. BREEN.—We offer this in evidence.

Mr. GEAGAN.—There is no objection to this, Mr. Breen.

Mr. BREEN.—(Reading.) “Denver, Colorado, October 27, 1914. Frank O'Connor, President Butte Miners' Union No. 1, [296] 217 North Main Street, Butte.

We believe it important that member of number one elected as delegate to A. F. of L.”—meaning the American Federation of Labor, I believe, is that not right? A. Yes.

Mr. BREEN.—(Continuing.)—“convention attend. Trial of Michigan makes it impossible to meet expenses of delegate. Advise number one advance Shea necessary amount and Federation will give them credit on account. Charles H. Moyer, Ernest Mills.”

The WITNESS.—To the best of my knowledge, the Butte Miners' Union, a corporation, owed to the Federation something like three thousand nine hundred dollars at the time I mention. I would not speak definitely. To the best of my recollection it was some three thousand odd dollars.

Q. Is it not a fact that at the time you claim that this indebtedness was owing that the Butte Miners' Union, this defendant, within a year, within six months or less than a year, that the Western Federation had received from them a sum far in excess of a

(Testimony of Ernest Mills.)

hundred thousand dollars.

Mr. GEAGAN.—We object to that, if your Honor please, as improper cross-examination, and incompetent, irrelevant and immaterial, as to the issues involved in the case at bar.

Which objection was by the Court sustained, to [297] which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—Last May I appeared as a witness in Department two of the District Court of the Second Judicial District of this county and state, and was examined by yourself.

Q. Do you recall, or did you not at that time, testifying in the presence of Judge McClernana, and Mr. Riley, the Court Reporter, and Mr. Lee and Mr. Oliver and Mr. Baxter, and a number of others, that the Butte Miners' Union did not owe one cent to the Western Federation of Miners?

Mr. HILTON.—We object to that as improper.

Mr. BREEN.—I will attempt to ask it according to my recollection in the exact language I asked the other.

Q. Were you not asked by me, in the trial you referred to, held before Judge McClernan, that if you had not sent a bill to me from Denver, claiming that the Butte Miners' Union, after having paid out, or having paid to the Western Federation a sum, I believe, in excess of a quarter of a million dollars inside of a year, that they still owed the Western Federation of Miners the sum of \$60,415.65, and did you not at that time state during that examination and in the

(Testimony of Ernest Mills.)

presence of the parties I have named, that the Butte Miners' Union did not owe the Federation a dollar.

[298]

Mr. GEAGAN.—To which we object, if your Honor please, as incompetent, irrelevant and immaterial, an attempt to impeach the witness upon a matter entirely collateral to the matters now at issue; and on the further ground and for the further reason that the question as propounded is improper cross-examination, and as not tending to prove or disprove any of the issues involved in the case at bar.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Q. You stated, Mr. Mills, I believe, this morning that the Federation was well financed, did you not?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, not within the issues of this case and improper cross-examination.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—I have a typewritten statement of my quarterly report with me. This is a typewritten copy of the last report.

Q. Is this a copy of the report that has been forwarded to the Butte Miners' Union?

Mr. GEAGAN.—We object to that, if your Honor please, as irrelevant and immaterial, not within the issues of this case, and improper cross-examination.

[299]

(Testimony of Ernest Mills.)

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—I have other reports at my room, bearing on the financial condition. This page of this report which you are looking at does not belong to it, and is not a part of it, but accidentally got in there. The report just comes to here (indicating).

Q. The report that you have offered, Mr. Mills, has just got what came in, but not the expenditures.

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—This witness has not offered the report. He has merely furnished it to you for your inspection on request.

(Witness excused.)

Mr. GEAGAN.—The plaintiffs and complainants, if the Court please, now rest. [300]

Testimony of Charles Baxter, for Defendant.

CHARLES BAXTER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Charles Baxter, and by profession I am a miner, having followed that off and on for twenty-six years last past, either mining or smelting. I first came to Butte in 1890, and at that time I was a miner. I joined the Butte Miners' Union, a corporation, the defendant here, in 1890, and was a member then. I was a regular attendant at the meetings of the Butte Miners' Union

(Testimony of Charles Baxter.)

during the year 1893, including the spring and summer months. I had left Anaconda and came up here and was a pretty regular attendant at that time.

Q. Mr. Baxter, were you familiar or do you know anything of the organization of the Western Federation of Miners or when it was organized?

A. Well, when they first talked about the organization of the Federation of Miners taking place, I was working in Anaconda, down in the smelter, and the most of it was from newspaper and talk amongst the men that belonged to the local organization down there, which was the old Knights of Labor; and that following spring, in 1893, I was in Butte, and had lodged a withdrawal card and was attending the meetings. I had belonged in 1890, taken a withdrawal card and lodged my card again, and was attending the meetings [301] when I would be day shift, and heard the usual talk around at the mine.

As to the joining of the Western Federation of Miners by the Butte Miners' Union, I know there was a committee appointed to meet with other committees from locals of Miners Unions in different parts of the country for to get together to try to organize a body for mutual protection and benefit. At that time there were other miners' unions in the vicinity of Butte, and in Montana, such as one at Neihart, and I knew of one in Granite.

Q. Do you know whether or not, Mr. Baxter, these unions in the outside of the state, or other places other than Butte, were organized by the Butte

(Testimony of Charles Baxter.)

Miners' Unions sending an organizer there?

Mr. GEAGAN.—We object to that as irrelevant and immaterial, and not within the issues of this case.

The COURT.—What is the object?

Mr. BREEN.—The object is to show, if your Honor please, that the Butte Miners' Union at that time itself was organizing the miners at Neihart and had organized them at Missoula, Granite and other places, and the question is leading up to show why the Federation was formed.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—I saw the first charter that was received [302] from the Western Federation of Miners hanging in the hall on the wall many, many times, and I was at one or more meetings prior to the adoption of the first charter, from the Federation, when the question came up as to whether the Butte Miners' Union would become members of the Federation; whether they would join in with the new organization that was proposed to be formed.

Q. Was there at any time, or was there in the charter that was received, any clause of a nature referred to here whereby all of the property would be forfeited if they joined the Federation and then saw fit to withdraw.

Mr. GEAGAN.—If your Honor please, to which we object as leading and suggestive, and on the further ground that it has not been shown that the witness is qualified to state whether or not there was any such clause in the charter.

(Testimony of Charles Baxter.)

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I have read the charter over several times and I never saw any clause authorizing the forfeiture of the property and the money; I read the charter and never saw it, and I read it from beginning to end.

Q. Will you tell us whether or not the question of what effect a joinder with the Federation would have on the property of the Butte Miners' Union was discussed at [303] those meetings that you referred to?

Mr. GEAGAN.—We object to that, if your Honor please, as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness, and the same is leading and suggestive.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I heard it discussed at one or more meetings, and also on the street corners and in the mine amongst the members of the union, as to what effect it would have, us joining the Federation, whether we would be responsible in any way, or whether they could hold our money in any way if we joined.

Q. Do you recall whether you were present at any time at a meeting when a part of the charter that would be acceptable to the Butte Miners' Union was shown?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, not having been estab-

(Testimony of Charles Baxter.)

lished that there was any part of any charter that was acceptable to the Butte Miners' Union ever having been received and not within the issues; that the witness is now testifying to a time after the organization of the Miners.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception. [304]

A. No, I cannot on oath testify that I was present and heard a part of the charter read.

The WITNESS.—I have taken several withdrawal cards from the Butte Miners' Union, but I have been continuously a member since 1898. At that time I came back to Butte to stay. At the present time I am president of the defendant corporation. I was off shift all through the summer and fall of the year 1914, and in the months of September and October, and attended the meetings all through because I had nothing else to do. I recall the time that the charter was received from Denver, after the one was destroyed, and I examined that charter when my attention was called to it; I was asked to examine it. I was in the office, in the hall in North Main Street when my attention was called to it and I was asked to examine it, and by that I mean in the office of the Butte Miners' Union, the defendant here.

Q. Was there any difference between charter your attention was called to and the old charter?

Mr. GEAGAN.—We object to that as calling for a conclusion of the witness.

(Testimony of Charles Baxter.)

The COURT.—Ask him if he can tell the difference if he knows of any. The objection is overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. And my attention was called to the forfeiture clause in the new charter which I could never recall having [305] seen in the old one.

The WITNESS.—There was no other difference existing between that charter that I can recall, and the old charter. Another difference in the charter, in the bottom of the charter there were a lot of names attached to the old charter that were not on the new one, but the body of the charter was practically the same except for the forfeiture clause.

Q. Then after this examination that you made of the charter, that your attention was called to, what was done with the charter?

A. As near as I can recall it, it came under the head of "Good and Welfare" at the meeting that night. Someone mentioned the fact of its coming up, and mentioned it that "we have received a new charter" and one of our members, Pat Leahy, to be exact with the name, picked it up and looked it over and read it, and he says: "We have no use for that," he says, "We don't want to lose our property" and he threw it on the table.

Mr. GEAGAN.—We object to that as a hearsay statement.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

(Testimony of Charles Baxter.)

A. (Continuing.) What I heard him mention was "that we have no use for that," and he threw it on the table, and I think that was the end of it, and there was no other action taken on it at that meeting. [306]

Q. Was this charter that was signed on or about the fifth day of October, or the one bearing date I believe of Denver, dated October 3d, was that charter ever accepted by the Butte Miners' Union, a corporation, the defendant here?

Mr. GEAGAN.—We object to that as calling for a conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Never, to my knowledge.

The WITNESS.—The charter referred to, the one which bears the date of Denver, October 3d, 1914, to my knowledge was tendered to Charles Mahoney, one of the general officers of the Federation, as not being a state charter. Pat Lee made that tender. At that time Mr. Mahoney said, "We don't want it," or "I don't want it."

Mr. BREEN.—If your Honor please, I take it from your Honor's statement a short time ago, that any reference or any testimony with regard to the large amounts of money that was paid by this defendant corporation to the Western Federation of Miners was not material in this case.

The COURT.—The mere fact alone that a great deal of money has been paid by the defendant to the

(Testimony of Charles Baxter.)

Western Federation, I don't see how that could be material, and I don't imagine there would be any dispute about it; no doubt [307] it is so. I don't see that it would be material, but in order to make your record you may make an offer to prove.

Mr. BREEN.—If your Honor please, the defendant now offers to prove by the witness now on the stand that during the time that the Butte Miners' Union was a member of the Western Federation of Miners, that they paid in dues and assessments, paid dues known as "per capita tax," and assessments demanded of them during the years that they were associated with the Federation, or local of the Federation, a sum in excess of one million dollars. And we further offer to prove that on numerous occasions they protested against these assessments, which sums amounted to several dollars per month, that they were told they would pay it whether they liked it or not. And to further offer to prove by the witness on the stand that between the 1st day of July, 1913, and the 1st day of July, 1914, they paid as assessments to the above-named Western Federation of Miners one hundred and thirty-eight thousand eight hundred and twenty-five dollars and sixty cents; donations, twenty-one hundred; per capital, seventeen thousand five hundred; supplies, five hundred; a total of one hundred and sixty-two thousand nine hundred and twenty-five dollars and sixty cents. And that between January 5, 1914, and June 15th, of this last year, they paid out in dues and assessments and donations and the Federation received the sum of

(Testimony of Charles Baxter.)

seventy-eight thousand five [308] hundred and fifty dollars from this defendant corporation. That we can prove those facts by the witness now on the stand, and by the witness Mr. Ernest Mills, who has already testified in this case, as shown by the records of the Federation, and that in addition to the amount paid the Western Federation of Miners claim that the Butte Miners' Union, a corporation, owed it a balance, and so carried it on its record and in its report, a balance of forty-four thousand two hundred and sixty-eight dollars and fifteen cents; and an additional amount in addition to the forty-four thousand two hundred and sixty-eight dollars and fifteen cents, and from January 1st to June 1st, 1914, and June 2d, of said year, the following additional indebtedness or amounts; January 1st, being forty-four thousand two hundred and sixty-eight dollars and fifteen cents; January 16th, an additional one thousand two hundred and fifty dollars indebtedness; January 21st, fifty-five dollars; February 3d—I can't make out the second figure—fifteen thousand four hundred and twenty-eight dollars; February 5th, an additional one thousand two hundred and fifty dollars; the 10th, a hundred fifty-six dollars and fifty cents; March 1st, an additional indebtedness of twenty thousand three hundred seventeen dollars fifty cents; March 2d, an additional one thousand two hundred and fifty dollars; March 2d, again, seven hundred and fifty dollars; March 18, one thousand two [309] fifty dollars; April 1st, twenty thousand six hundred thirty-nine

(Testimony of Charles Baxter.)

dollars fifty cents; April 10th, one thousand two hundred fifty dollars; May 1st, nineteen thousand six hundred fifty-six dollars; May 7th, one thousand two hundred fifty dollars; June 1st, seven thousand five hundred seventy-six dollars; June 2d, one thousand two hundred fifty dollars, making a total amount paid from January 1st, 1914, to June 2d, 1914, of a hundred and thirty-six thousand eight hundred and sixty-four dollars, sixty-five cents. And in addition to the above, and after receiving the seventy-eight thousand five hundred fifty dollars, as claimed, the Western Federation of Miners claimed that on June 13th, 1914, there was due and owing a balance of sixty thousand four hundred fifteen dollars sixty-five cents.

And as a further reason for this withdrawal we offer to prove by this witness and other witnesses to be hereafter called, that they, Mr. Moyer, one of the plaintiffs here, attempted, after the destruction of the hall of this defendant, on the 23d day of June, 1914, to get possession of the money of this defendant in the banking house of the Daly Bank & Trust Company, and take it away with him to Denver; and that later there were repeated demands made during a period of months, continuous demands made upon this defendant to contribute money to the Western Federation of Miners, and asking a donation of five thousand dollars, which was rejected, and then members of the Executive Board were sent here for the purpose of getting money from [310] this defendant, and after demanding the five thou-

(Testimony of Charles Baxter.)

sand dollars, and it being up for a number of meetings, I believe two or more, they finally accepted the sum of one hundred dollars.

That because of these requests for donations and the treatment accorded these members, the action of this withdrawal complaint; but that prior thereto an action was brought against the officers of the local under a certain clause of the constitution of the Western Federation of Miners, which was specially prepared for the purpose of getting possession of this property, to oust the officers from the office and get the handling of this property for themselves.

We further offer to prove by the witness now on the stand and by other witnesses to be hereafter called, that the defendant, the Butte Miners' Union, a corporation, never received one cent so far in any shape, manner or form, or any benefit or any returns whatever from the moneys so demanded and received by the Western Federation of Miners through its officers.

And if your Honor please, we have also set up as a defense that at the time of the organization of the Miners' Union, and the time of its incorporation, that its aims and objects were for the purpose of protecting its members. We set out what the purpose was and what the monthly dues would be and the object for which money was [311] collected, —, a hall to hold meetings in, to take care of the sick, to bury their dead—well, I suppose I can introduce the articles with reference to that later—so we

(Testimony of Charles Baxter.)

submit the offer for the purposes here stated.

Mr. GEAGAN.—To which the plaintiffs and complainants object on the ground and for the reason that the testimony offered to be submitted and the proof to be adduced by witnesses is incompetent, irrelevant and immaterial to the issues involved in the case now at bar. As to all of the donations, and per capita tax, and so forth, the same would involve an accounting, and it is not involved in the suit at bar; and for the further reason that there is no issue involved in the case at bar, save and except as to the contractual relation between the complainant and the defendant with regard to the relations entered into between them, and the effect of their act of withdrawal as to the relation, and that it would not tend to prove or disprove these issues.

Mr. BREEN.—Before your Honor rules, I would like to offer an additional matter. Defendant offers to prove by the witness now on the stand and by other witnesses and documentary evidence that can be produced, that, as another reason why they did not desire to remain longer associated with the Western Federation of Miners was that the officers seemed to have, and upon making an examination they found that the plaintiffs heretofore named—there are only two of [312] them at present before the Court—but members and officers of the organization had received large amounts of money, to wit: John C. Lowney, who is present in the courtroom, and a member of the Executive Board of the above-named Western Federation of Miners, besides

(Testimony of Charles Baxter.)

per diem, which amounted to seven dollars fifty cents per day, an additional amount for traveling expenses, and incidentals between the twenty-second day of August, 1913, and December 9, 1913, received from the funds of the above-named Western Federation of Miners the sum of eighty thousand dollars; that from September 26th, 1913, to October 16, of the same year, Guy E. Miller, one of the plaintiffs above named, who is generally and now is an officer of the Western Federation of Miners, and executive board member, received out of the funds of the said organization, besides per diem at the same rate of seven dollars fifty cents a day, and expenses, from September 26 to October 16, the sum of one hundred thousand dollars; that C. E. Mahoney, the witness who recently left the stand, besides per diem at the rate of seven dollars and fifty cents, and traveling expenses, received between the date of October 24, 1913, and November 17, of the same year, the sum of eighty thousand dollars; that Albert N. ———, a member of the organization appointed to handle its funds between the dates of December 23d, 1913, to May 20, 1914, the sum of a hundred and eleven thousand six hundred dollars out of the Western Federation; [313] that Charles H. Moyer, one of the plaintiffs here, in a period of three months commencing December 20, 1913, received from the funds of the Western Federation of Miners the sum of twenty-five thousand dollars, exclusive of per diem and traveling expenses at the rate of seven dollars and fifty cents, and traveling expenses. And fur-

(Testimony of Charles Baxter.)

ther that they found that there was expended by the above-named Western Federation of Miners, through its paid employees, for the year beginning July 1st, 1913, and ending July 1st, 1914, the sum of nine hundred and nineteen thousand, five hundred and twenty-two dollars and three cents; and that when those facts became known very many and nearly all of the locals composing the Federation became dissatisfied and refused to pay, and the condition of the Federation would show, became such that they were unable to pay their bills or to carry on the publication of the "Miners' Magazine," and that it was reduced from a respectable proper magazine similar to the size and printed on the same character of type and paper, as the "Saturday Evening Post," and issued weekly, to a little handbill issued once a month; and that because of their financial condition and to avoid further notoriety and publicity this defendant, the Butte Miners' Union paid one hundred and thirty-three dollars for guns purchased by Mr. Moyer between the nineteenth and the twenty-third days of June, 1914, and paid a bill for the traveling expenses of Mr. Shea, as requested by Mr. [314] Moyer and Mr. Mills, amounting to the sum of three hundred and fifty dollars, on a trip to Philadelphia as a delegate.

Mr. GEAGAN.—To which further offer we interpose the objection interposed to the former offer made, and to the whole of the offered evidence, we interpose the objection that the same would involve a matter arising in an accounting; and for the fur-

(Testimony of Charles Baxter.)

ther reason that the same, even if true, would not constitute a defense to the action now at bar as the same would not have anything to do with the contract that is now in controversy before the Court; and upon the further ground and for the further reason that the same would tend to involve an accounting between the Western Federation of Miners and certain individuals named in the offer to prove, but in this case it is entirely incompetent, irrelevant and immaterial, and improper cross-examination, and not within the issues involved in the case.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—The property of the Butte Miners' Union was accumulated by the monthly dues collected from the members, and those monthly dues were collected for the purposes of paying the running expenses every month, and paying sick and funeral benefits, and also giving donations to a brother who happened to be in need. It was used for [315] that purpose, and that has been the policy since the year 1890, when I first became a member.

Q. Do you know whether or not, during the years that you have been a member of the Butte Miners' Union, a corporation, the defendant here, that the union assisted other local unions that were in debt, to get out of debt, or to protect their property, as to funds?

Mr. GEAGAN.—We object to that as entirely in-

(Testimony of Charles Baxter.)

competent, irrelevant, immaterial, and not within the issues.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—I never have seen a copy of this constitution before, which is marked Defendant's Exhibit 2 for identification. The last one I ever had in my hands before was the one up to 1912. This one has been amended, and I never did see a copy of it as it has been amended. I saw the amendments that were proposed at the last convention.

Mr. BREEN.—I suppose, Mr. Geagan, that we can agree that this constitution with the blue cover is the same as the one with the red, with the addition of the amendments that are on the sheet that Mr. Baxter has in his hands.

Mr. GEAGAN.—What is the object?

Mr. BREEN.—I would say that I propose to offer in evidence three sections of this constitution, in fact I will [316] offer three sections of the constitution. They are not in any manner affected by the amendments, but we would rather offer the whole constitution.

It is admitted, if your Honor please, that this is the last constitution, and I desire to offer in evidence section three of article one.

Mr. GEAGAN.—No objection to that.

Mr. BREEN.—Section three of article one (reading): "Whenever twenty or more persons, working as specified in section one of this article, shall be

(Testimony of Charles Baxter.)

found that will be self-supporting, they shall, on application, be granted a charter, provided that no charter shall be issued the effect of which is to segregate the crafts engaged in the mining industry."

I also offer section one of article six.

Mr. GEAGAN.—Go ahead.

Mr. BREEN.—Section one, article six (reading): "The revenue of the Federation shall be derived from a charter fee of ten dollars, and a per capita tax of twenty-five cents per month on all monthly dues collected in accordance with the stamp system, to be paid from the general fund of each union through the purchase of said stamps in advance, and such assessments as may be levied by an international convention or a referendum vote of the members of the Western Federation of Miners, or by the international executive board, for a period of two months [317] pending the referendum vote. The same shall be paid from the general fund, and based on the preceding monthly report previous to such assessment."

I also offer section four of article fifteen.

Mr. GEAGAN.—No objection.

Mr. BREEN.—Section four of article fifteen (reading): "The property of defunct unions shall be held in trust by the Federation, and where local unions are reorganized within a period of one year, comprising of twenty or more members of the former local, the property so held in trust shall be returned to the reorganized local, but when the locals are

(Testimony of Charles Baxter.)

reorganized with less than twenty members of the former local, they shall have no claim on the property of the defunct union. At the expiration of one year from the date of the local going defunct, the property shall cease to be held in trust, and become the property of the Federation."

Now, if your Honor please, I offer the whole constitution, which is marked Defendant's Exhibit 2, for identification, in evidence, for the purpose of showing that there is no clause in the constitution *for* which provides for the forfeiture of the property of any local union withdrawing from the Federation, and that under the constitution and laws of the Western Federation of Miners there is no authority whatever vested in any officer or body of officers to incorporate a clause of the [318] kind referred to in the charter, the charter that was claimed to be issued to this defendant corporation; and further for the purpose of showing that there is no provision in the constitution providing for the organization or existence of either a member or a local at large.

Mr. GEAGAN.—To which we object as incompetent, irrelevant and immaterial. The constitution would not be competent to prove what it does not contain; it is only competent to prove what it does contain; for the further reason that what it does not contain would be entirely irrelevant and immaterial, and that it would be only the things that it did contain that would be competent, relevant or material if at all, and that it could not be taken as evidence

(Testimony of Charles Baxter.)

for the purpose of showing that it did not contain what counsel desires to show.

The COURT.—I think the Court might want to look at this Constitution, and By-laws, as part of your agreement between locals and the Federation, so the objection will be overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

Which said document is as follows:

**Defendant's Exhibit 2—Constitution of the
Western Federation of Miners A. F. of L.**

CONSTITUTION of the Western Federation of Miners Affiliated with A. F. of L. Adopted at Butte City, Mont., May 19, 1893. Amended at Salt Lake City, Utah, 1894. [319] Amended at Denver, Colorado, 1895. Amended at Denver, Colorado, 1896. Amended at Salt Lake City, Utah, 1897. Amended at Salt Lake City, Utah, 1898. Amended at Salt Lake City, Utah, 1899. Amended at Denver, Colorado, May, 1900. Amended at Denver, Colorado, May, 1901. Amended and revised at Denver, Colorado, November, 1901. Amended at Denver, Colorado, May, 1902. Amended at Denver, Colorado, May, 1903. Amended at Denver, Colorado, May, 1904. Amended at Salt Lake City, Utah, 1905. Amended at Denver, Colorado, May, 1906. Amended at Denver, Colorado, June, 1907. Amended at Denver, Colorado, July 1908. Amended at Denver, Colorado, July, 1909. Amended at Denver, Colo-

rado, July, 1910. Amended at Butte, Montana, July, 1911. Amended at Victor, Colorado, July, 1912. Amended at Denver Colorado, July, 1914.

PREAMBLE.

1. We hold that there is a class struggle in Society and that this struggle is caused by economic conditions.

2. We affirm the economic condition of the producer to be that he is exploited of the wealth which he produces, being allowed to retain barely sufficient for his elementary necessities.

3. We hold that the class struggle will continue until the producer is recognized as the sole master of his product.

4. We assert that the working class, and it alone, can and must achieve its own emancipation. [320]

5. We hold, finally, that an industrial union and the concerted political action of all wage workers, is the only method of attaining this end,

6. Therefore, we, the wage slaves, employed in and around the mines, mills, smelters, tunnels, open pits and open cuts, have associated in the Western Federation of Miners.

CONSTITUTION.

Article I.

Section 1. This organization shall be known as the Western Federation of Miners, and shall be composed of all persons working in and around mines, mills, smelters, tunnels, open pits and open cuts, organized into unions paying per capita tax to the Federation.

Sec. 2. The objects of this organization shall be to unite the various persons working in and around the mines, mills, smelters, tunnels, open pits and open cuts, into one central body, to practice those virtues that adorn society and remind man of his duty to his fellow man, the elevation of his position and the maintenance of the rights of the workers to increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

Sec. 3. Whenever twenty or more persons, working as specified in Section 1 of this article, shall be found that will be self-supporting, they shall, on application, be granted a charter. Provided that no charter shall be issued [321] the effect of which is to segregate the crafts engaged in the mining industry.

Article II.

Convention.

Section 1. This Federation shall hold its biennial convention on the third Monday in July, at such place as the convention shall designate before adjournment of any session thereof.

Sec. 2. Each union shall be entitled to one delegate for one hundred members or less, and one for each additional one hundred or majority fraction thereof. Provided, no delegate shall in any event, either holding proxy votes or representing a union entitled to a greater number, cast more than five votes.

Sec. 3. Representation in the biennial convention shall be based on the April report prior to the

holding of the convention, and the January report of each year shall be an annual report; provided, in case a special convention is held, the representation shall be based on the last monthly report prior to the calling of the special convention.

Sec. 4. Each union shall elect a delegate or delegates, and alternates to attend the biennial convention of the Federation. Such delegates and alternates shall be nominated and elected in compliance with Section 1, Article XIV of the Constitution, and said election of delegates and alternates shall take place at the semi-annual election of all [322] local unions, the first meeting in June. The alternate delegate shall only attend and be entitled to a seat in the convention when the regularly elected delegate fails, refuses or is unable to be present to discharge his duties. To be eligible, a delegate or alternate must be a *bona fide* wage worker in the jurisdiction of his local union, or one who is employed by his local union, or the Western Federation of Miners, having a membership in good standing in the Western Federation of Miners for a period of not less than one year, immediately preceding the date of his nomination; provided, however, that the provisions of this section shall not apply to the unions and members thereof which have been organized for a length of time less than that mentioned herein. Delegates shall present their credentials and have them passed upon before taking their seats in the convention. Delegates in attendance at the convention and absenting themselves without permission from the sessions thereof shall not be entitled to their per diem for

any day, or part of a day, upon which they were absent. Duplicate credentials must be in the hands of the Secretary-Treasurer at least fifteen days prior to the meeting of the convention. No local union shall be entitled to representation in the convention which has not complied with the Constitution of the Federation. All proxy credential certificates must be sent direct to the delegates named thereon, and the duplicate certificate to the Secretary-Treasurer [323] at headquarters fifteen days prior to the meeting of the biennial convention.

Sec. 5. Delegates representing a majority of the unions comprising the Federation shall constitute a quorum.

Sec. 6. Ladies' Auxiliaries of the Western Federation of Miners shall be entitled to one delegate with one vote for each auxiliary in good standing and transportation expenses for said delegate shall be paid by the Federation.

Pay of Delegates.

Sec. 7. The pay of each delegate to the viennial convention shall not be less than \$5.00 per day, which shall be paid by the union he represents.

The Federation shall pay the transportation expenses of one delegate from each union in good standing. Any union electing more than one delegate shall pay transportation expenses on all delegates elected above that number. Secretaries of all local unions shall insert on credential card the name of delegate entitled to mileage at headquarters.

Article III.

Nomination and Election of Officers.

Section 1. The officers of the Federation shall consist of the President, Vice-President, Secretary-Treasurer, and four other Executive board members, all of whom shall be elected by a vote of the membership.

Sec. 2. The call, with blanks for nominations, shall be issued by the Secretary-Treasurer on the first day of [324] March in each even numbered year. Each local may nominate one candidate for each office, but the name of no candidate shall be placed on the ballot unless nominated by at least five locals.

Sec. 3. The returns of the nominations must be in the hands of the Secretary-Treasurer of the Western Federation of Miners not later than the 15th day of April; provided, that any local that cannot be reached by mail may use telegraph or other means of communication.

Sec. 4. The Secretary-Treasurer shall immediately notify each nominee of his nomination, and his acceptance, together with a statement certifying to the eligibility of the nominee for the office for which he is nominated according to the provisions of this constitution, must be in the hands of the Secretary-Treasurer not later than May 10th.

Sec. 5. The Secretary-Treasurer shall send to each local union a sufficient number of ballots for the members thereof on which shall be printed in full the names of all eligible candidates. The voting

shall take place at the regular June election of that year.

Sec. 6. The Secretaries of the local unions shall immediately after election send the ballots and returns of the election to headquarters, said returns to be signed by the judges of election, countersigned by the Secretary and bear the seal of the local union. The returns shall be sent to headquarters in a special envelope provided by headquarters [325] on which shall be printed the words "Election Returns," these returns and the ballots to be held intact until the convening of the Convention.

Sec. 7. At the Convention a committee of three shall be elected to canvass the returns, the ballots to be held intact until the close of the Convention, after which, if no contest is made, these ballots shall be destroyed.

Sec. 8. For the offices of President, Vice-President and Secretary-Treasurer the candidates receiving the highest number of votes for each of those respective offices shall be elected, and the four candidates for Executive Board members receiving the four highest number of votes shall be declared elected.

Sec. 9. All officers elected to be installed at the Convention or, if absent, as soon thereafter as possible, and they shall take office on the 1st day of September following.

Sec. 10. Delegates to the American Federation of Labor Convention shall be elected annually, according to the same provisions for the election of officers in the biennial election.

Sec. 11. The candidates receiving the highest number of votes shall be declared elected.

Sec. 12. The candidates receiving the next highest number of votes shall be declared alternates. [326]

Sec. 13. Delegates to the American Federation of Labor shall receive the same pay as Delegates to the Western Federation of Miners' Convention.

Sec. 14. To be eligible to any elective office, or Delegate to the American Federation of Labor Convention, the same qualification shall be required as those provided in this Constitution for Delegates to the Western Federation of Miners' Convention.

Sec. 15. All nominations shall be open in each local the first meeting in March and remain open for three regular meetings. The choice of the local shall be determined through election by ballot. Said nomination election to be held on the day of the fourth regular meeting in March. The polls shall be held open on election day from 9 A. M. to 9 P. M. in all locals and notice of said election shall be given by posting same in the local's office and hall and inserting in the local press wherever possible. The candidates receiving the highest number of votes in the nomination election shall be declared the nominee of the local.

Recall of Officers.

Sec. . On petition for the recall of an official of the Western Federation of Miners signed by not less than ten per cent of the membership of the Federation in good standing from not less than ten local unions of the Western Federation of Miners, it shall

be the imperative duty of the Executive Board to call for a referendum vote of the entire [327] membership in the manner provided for in Section 10, Article IV.

Article IV.

Duties of President.

Section 1. It is the duty of the President to preside at all meetings of the Federation, preserve order, enforce the Constitution and watch vigilantly over the interests and affairs of the Federation. In this he shall be assisted by all the officers of the Federation. He shall have the right to vote at the election of officers, and when the members are equally divided he shall have the deciding vote on the question under consideration. He shall sign all orders drawn by the Secretary-Treasurer, in compliance with a vote of the majority at any session of the Executive Board. He shall, with the approval of the Executive Board, fill all vacancies occurring in the Executive Board, or in the offices of Vice-President and Secretary-Treasurer. He may, with the approval of the Executive Board, appoint such organizers as the condition of the Federation may justify. Said organizers shall at all times act under the instructions of the President, and they shall receive not less than \$100 per month for such time as they are actually employed, together with transportation expenses, and they shall report to the office of the Federation in writing at least once each week while in the employ of the Federation as organizers. The President shall visit each [328] district once each year, and visit as many unions as the conditions of the Federation will per-

mit; and he may also examine the books of any union he visits, provided he has time so to do, in order to ascertain if each union is paying its share of the maintenance of the Federation, he shall communicate with persons living in places where the Federation does not exist, and have them organized, if possible. He may convene the Executive Board when, in his opinion, the affairs of the Federation will justify the same; and he may, with the approval of the Executive Board, call an extra convention of the Federation, and he shall, on written request of six members of the Executive Board or on written request of ten unions having a combined membership of 7,500, call an extra convention of the Federation. He shall be and he is hereby constituted the trustees to sell, transfer or encumber in any manner and to any extent that he deems for the best interests of the Federation, any and all real and personal property, except the funds of the Western Federation of Miners, with the concurrence and under the direction of the Executive Board of the Federation, or a convention duly called and assembled, and he shall execute all such documents in manner following: The Western Federation of Miners, by _____, Trustee. He shall submit a complete report of his work during the term of his office to each convention, and make such recommendations as in his [329] judgment will advance the interests of the organization. The President shall have the power, with the consent of the Executive Board, to revoke the charter of or penalize any local union for violation of the Con-

stitution, or proven treachery to the principles of the Western Federation of Miners. The President shall have power on petition of ten per cent of the members in good standing in their respective locals making charges in writing against their local officers to take complete charge of the local's affairs, and if the charges are proven he shall call a special election within thirty days and place the local's affairs on a business basis before relinquishing to local's officials. He shall receive \$5.00 per day for his services, besides such an additional amount as may be necessary to defray his transportation and other expenses.

Duties of Vice-President.

Sec. 2. It is the duty of the Vice-President to assist the President to preserve order at all meetings and assist him in the discharge of his duties; preside during his absence, and perform the duties devolving upon the President; and in case of vacancy occurring in the office of President, he shall ascend to the Presidency and act as such for the unexpired term.

Duties of the Secretary-Treasurer.

Sec. 3. It shall be the duty of the Secretary-Treasurer to attend all conventions of the Western Federation [330] of Miners, and bring thereto all the necessary books, papers, and documents pertaining to his office, and keep a proper and correct record of the proceedings of the convention; read all petitions, resolutions and communications, not in charge of a special committee, which may be submitted to the Federation, file and safely keep, unless otherwise ordered, all papers or documents which have

been before the convention. At each biennial meeting of the convention he shall submit a complete report of the receipts and disbursements of the Federation for the preceding year, number of unions organized, number in good standing and the number of unions disbanded, if any, and the cause thereof. If ordered by the convention, he shall cause to be printed duly authenticated copies of the proceedings of the convention and furnish each local union with a copy thereof. He shall prepare, sign and seal all charters and such other papers and documents as may emanate from the Western Federation of Miners, and which are required to be duly authenticated. He shall, at the end of each quarter, send a report to each local union, showing the receipts, and the dates thereof, of all moneys received from the local unions for the preceding quarter. All moneys coming into his hands belonging to the Federation shall be deposited at least twice a month, in some solvent bank or banks, and shall only be drawn out to pay indebtedness arising out of the due conducting of the business of the Federation, [331] and then only after a bill shall have been first duly presented by the creditor, when in payment thereof a check shall be drawn and signed by him, after which he shall present it, together with the bill, to the President for his counter-signatures. He shall have charge of all the funds and property of the Western Federation of Miners, and shall keep a careful and accurate account thereof, as well as an accurate account of all funds arising out of the relation of the Federation with the local unions, and whenever

money is received from a local union a receipt therefor must be given or mailed to the sender. He shall promptly attend to all correspondence pertaining to his office, and within the first week of May of each year he shall send to each union which is not indebted to the Federation for moneys, which it should have paid under the Constitution, duplicate credentials for delegates. Upon the expiration of his term of office or retirement from any cause he shall faithfully account for all money or property coming into his hands and all funds or property remaining in his hands or not paid out or disposed of or in due course of the discharge of his official duties, it shall be accounted for and turned over to his successor or such other person who may be duly authorized to take into his custody the funds or property of the Federation. For the honest and faithful discharge of his duties he shall give a bond in the sum of not less than \$30,000, the bond [332] so given to be approved by the Executive Board and kept in their custody. For his services he shall receive the sum of one hundred and fifty (150) dollars per month, which may be paid monthly out of the funds of the Federation, in the same manner as is provided for in the payment of other bills and indebtedness. He shall issue a supplement to his quarterly report of all members suspended, fined or expelled during the quarter.

Executive Board.

Sec. 4. The Executive Board shall constitute the Federation board of arbitration and conciliation, and between conventions have full power to direct the workings of the Federation. No representative

of a union shall be entitled to a hearing before the Executive Board without proper credentials, with the seal of the union attached thereto.

Sec. 5. The Executive Board shall be conveyed by the President, or by the Secretary-Treasurer at the request of three members of the Board.

Sec. 6. The jurisdiction of the Western Federation of Miners shall cover the United States and its territories, and the Dominion of Canada.

Sec. 7. Each member of the Executive Board shall act as an organizer and he shall also be required to make such investigation relative to the condition of each local union, as in his judgment may be necessary, and make a report thereof [333] of the President of the Federation on or before the 10th day of June of each year. In case of trouble arising in the jurisdiction of a union, the member shall be summoned and given full charge in the direction or negotiations until the arrival of the President, who shall be summoned if necessary. For all necessary services rendered in the discharge of his duties, he shall receive the sum of \$4.00 per day and legitimate expenses for such time as he is actually employed, together with his transportation expenses, and he shall at all times be subject to the orders of the President.

Sec. 8. The Executive Board members shall be placed on continuous pay, and kept in the field constantly, and be at all times under the direction of the President, who shall direct their actions in the field, and shall require each member to report weekly the result of his work, and to audit the books of all locals

he may visit and make a thorough report on condition of same.

Sec. 9. All members of the Executive Board and organizers employed by the Federation shall submit monthly reports for publication in the Miners' Magazine, these reports to contain matters of interest to the general organization.

Sec. 10. The Executive Board shall, on demand of ten or more locals, submit all such matters pertaining to such proposition to a referendum vote through the Secretary-Treasurer, [334] not later than fifteen days after receipt thereof; provided that no such referendum shall be submitted which is a reversal of a former referendum within one year. The majority of such vote shall be binding on all parties concerned.

Sec. 11. The Executive Board members shall be delegates at large to the convention and entitled to the same privileges as other delegates at the convention.

Sec. 12. The Executive Board shall have the books and accounts of the Secretary-Treasurer audited semi-annually by a firm of chartered accountants, and a copy of their report shall be forwarded to each local union as soon as possible after the audit is made.

Article V.

Local Union Auditors.

Section 1. The President shall appoint, with the approval of the Executive Board, one or more auditors whose duty it shall be to audit the books and accounts of all unions of the Federation, and to ren-

der to the President a report of his findings in each case.

Sec. 2. Such auditor shall be at all times under the direction of the President. He must be a competent bookkeeper and a member of the Federation in good standing. It shall also be his duty to collect for the use of the Federation such statistics as may be determined by the President and Executive Board and whenever possible solicit [335] subscriptions and advertising for the Miners' Magazine.

Reports of A. F. of L. Delegates.

Sec. 3. Delegates to the A. F. of L. convention shall represent the Western Federation of Miners in convention of the American Federation of Labor and shall render a report to the President of the W. F. M. within thirty days after the adjournment of the A. F. of L. convention.

Article VI.

Revenues and Disbursements.

Section 1. The revenue of the Federation shall be derived from a charter fee of ten dollars and a per capita tax of twenty-five cents per month on all monthly dues collected in accordance with the stamp system, to be paid from the general fund of each union through the purchase of said stamps in advance, and such assessments as may be levied by an international convention or a referendum vote of the members of the Western Federation of Miners or by the International Executive Board for a period of two months pending the referendum vote. The same shall be paid from the general fund, and based

on the preceding monthly report previous to such assessment.

Sec. 2. There shall be levied a fifty cents assessment every three months of each year, at such time when no other general assessment is on, to be known as Protective Assessment for strike benefit, levied as follows: September, December, March and June. [336]

Sec. 3. Any union failing to purchase the required number of per capita and assessment stamps to stamp all membership cards, in compliance with the stamp system, shall be penalized as prescribed by Section 1, Article X.

Sec. 4. Special reinstatement stamps shall be provided by headquarters, locals to be charged two dollars (\$2.00) each per stamp, and required to put such reinstatement stamp on the membership card of each member paying a reinstatement fee.

Article VII.

Official Journal.

Section 1. The Journal shall be issued weekly under the direct supervision of the General Executive Board. The Executive Board shall have the power to appoint the Editor of the Miners' Magazine.

Sec. 2. The pages of the official journal shall be open to all officers and members of the organization for the discussion of social affairs, industrial, economic and political questions, or any other questions pertaining to the interest of the working-class. It shall endeavor to enlighten the membership of the organization on the cost of production of the various

kinds of metals, viz.: iron, steel, lead, zinc and copper, and its market value. It shall endeavor to give statistics showing what wages are being paid to the miners, millmen and smeltermen and steel workers in the different States and territories in the jurisdiction of the [337] Western Federation of Miners. It further shall endeavor to demonstrate what relation there exists between one set of workers and another set of workers, especially those workers who are engaged in the production of coal, iron, steel, lead, zinc and copper, and other precious metals, and it shall at all times advocate the principles of Industrial Unionism.

Article VIII.

Strikes and Adjustments.

Section 1. It shall be unlawful for any union to enter upon a strike unless ordered by two-thirds of the votes cast upon the question; such questions shall be decided by referendum vote, notice of such referendum to be posted three days in advance, vote to be by ballot and polls to be open for not less than eight hours. No call shall be made for a referendum vote on a strike until after having received the approval of the Executive Board of the W. F. M.

Sec. 2. In case of a strike being in progress in the jurisdiction of the Federation, where a union or unions of the Federation is on strike, regularly ordered by the union or unions and the Executive Board, and in the opinion of the President and the Executive Board it becomes necessary to call out any other union or unions in order to carry the strike to a successful termination, that they shall have full power to do so.

Sec. 3. Whenever a strike shall be approved by the Executive [338] Board and local union or unions as authorized by Section 1 of Article VIII, the President shall appoint, with the consent of the Executive Board, a representative of the Federation to take charge of the funds furnished by the Federation for the relief of members involved in said strike or lockout. The representative so chosen shall file a bond with the Executive Board, subject to its approval, in such sum or sums as the Board may determine, he shall make complete itemized returns of all receipts and expenditures, including a list of the persons aided to the Secretary-Treasurer and through him to the Executive Board.

Sec. 4. Local unions or groups of local unions may enter into wage agreements for a specified time, providing such agreements have the approval of the Executive Board. Negotiations for agreements must be made between the representatives of the local or locals affected, and the employers, with at least one member of the Executive Board, or representative of the general organization present.

Article IX.

New Unions.

Section 1. Whenever twenty or more union men shall be so situated within the jurisdiction of a union that the attendance at the meetings of such union would be inconvenient, they may apply to the President of the Federation for a charter. Should he consider their application a proper one for the advancement, both of the interests of [339] the applicants and the Federation, a charter shall be

granted them and their territorial jurisdiction defined. If such applicants are members they must apply to their respective unions for transfer cards, through the secretary-elect. Any union refusing to issue such cards shall be subject to a fine, the amount of which shall be determined by the Executive Board.

Article X.

Penalties.

Section 1. Any union failing to make correct monthly reports to the Secretary-Treasurer of the Federation, thereby evading its just share of the per capita tax and assessments, shall be fined for each offense a sum equal to double the amount so evaded.

Sec. 2. Any local union whose Secretary fails to place the required number of per capita or general assessment stamps upon a member's card shall be subject to a fine of one dollar for each stamp not so placed.

Sec. 3. Any local union whose Secretary fails to forward to the Secretary-Treasurer of the Federation properly filled out monthly and annual reports within twenty days after the same become due, shall be advertised in the Miners' Magazine. This section shall not apply to local unions in Alaska.

Article XI.

Duties and Privileges of Members. [340]

Section 1. Each member at initiation shall pledge himself to support the Constitution of the Federation and obey all lawful orders of the Executive Board, in addition to the obligation required by the union of which he becomes a member.

Sec. 2. If a member of a union commits an offense in violation of his obligation or against the good and welfare of the Federation, his union or any union of the Western Federation of Miners, the general officers, members of the Executive Board, or any members of the Federation, or in violation of the Constitution of the Western Federation of Miners, or affiliated unions, he shall be entitled to an impartial trial by his local union as hereinafter provided. The offense of which he is charged shall be presented in writing to his local union by the members making the charge who at the time must be a member of the Western Federation of Miners in good standing, said charges shall be read by the Recording Secretary of the union, at the first regular meeting of the union after the paper containing the charges are received. When said charges are read the President shall, without discussion, appoint an impartial committee of five members of the union in good standing to investigate such charges whose duty it shall be to present a copy of the charges to the member against whom the charges have been preferred, and notify him when to appear before said committee for trial. Similar notice shall be served upon the member [341] preferring the charges. This committee shall elect a chairman and secretary before proceeding to hear evidence for the plaintiff and defendant and keep a correct copy of the charges and all testimony presented and submit the same to the union with their written report signed by all members of the committee. The union shall either adopt or reject the report of the committee. Either the plaintiff or defendant shall have the right to appeal

to the Executive Board of the Western Federation of Miners and from that body to the ensuing convention. The Executive Board shall receive no evidence in the case except the records of the committee nor permit any witness to appear for the plaintiff or defendant. Should the union fail to preserve the records of the investigation as returned by the committee or refuse to surrender the same to the Executive Board, upon request of the Secretary-Treasurer it shall be subject to whatever penalty the Executive Board may deem necessary to impose upon it.

Sec. 3. The convention shall have the power to bring any official of the Federation, delegate, or member of the Federation before the bar of the convention for trial. The convention shall choose its method of procedure, have full power to record and enforce its verdict. From its decision there shall be no appeal.

Sec. 4. Any one acting as a strike-breaker or scab during a strike in the jurisdiction of the Western Federation [342] of Miners, who professes to have seen the error of his ways, may be placed on probation by the local union involved, or by any local union in whose jurisdiction he may be employed when such charges are preferred against him, provided the local involved grants permission; provided, that this shall in no way apply to any man who has been a deputy sheriff or gun man in the employ of any corporation. Such men shall remain on probation until such time as the local union, in whose jurisdiction he is working out his probation shall declare his offense expiated in full by good work for the cause.

In case of a union being defunct, the Executive Officers of the Western Federation of Miners shall be governed by this provision. The card issued on probation shall be marked "probation card."

Sec. 5. Whenever any member or members of a local union shall be discharged for actively participating in the affairs of the local union, or of the Western Federation of Miners, or on account of his race, color, religious or political beliefs, it shall be the duty of the local union to investigate fully and use all means in their power to have such member or members reinstated in their former positions.

Sec. 6. Whenever any local or district union shall enter into any agreement on contract with their employers, the principles embodied in Section 5 of this article shall [343] be made a part of such agreement or contract.

Sec. 7. Whenever a member of a local union shall become a foreman, shift boss or assume a position that cannot be termed as part of the mining industry, he shall lose all rights to a voice, vote or seat in the meetings of his local union, but may continue his membership as a beneficiary member, or upon application to the Financial Secretary he may be granted a withdrawal card.

Sec. 8. Any member who has been unemployed for one clear calendar month, or more, in the jurisdiction of any local, may retain full membership upon payment of the regular monthly dues, all assessments for the stated period being liquidated by means of "unemployed stamps" provided for the purpose. The unemployed member must obtain the stamps or

stamp from the Secretary of the local in whose jurisdiction he is idle for the required period.

LOCAL UNIONS AND MEMBERS.

Article XII.

Receipts and Accounts.

Sec. 1. Local unions shall preserve all receipts issued by the Secretary-Treasurer and have the same presented to the finance committee at the biennial convention, through their delegates to the convention, in order to compare them with the stub-book of the Secretary-Treasurer. [344]

Password.

Sec. 2. The President shall send to each union which has paid per capita tax and is not ninety days in arrears for assessments, a quarterly password.

Membership Card.

Sec. 3. Throughout the jurisdiction of the Western Federation of Miners a uniform membership card shall be used. The same shall be the stamp card system, approved by the Tenth and amended by the Sixteenth Annual Convention; the form and style of said cards shall provide a space wherein local Secretaries shall record the amount of sick benefits received by each member. Said card shall be designed by the Executive Officers of the Western Federation of Miners.

Withdrawal Cards.

Sec. 4. If a member takes a withdrawal card from to the union to which he belongs and goes to work as specified in Section 1, Article I, of the Constitution, where there is a union of the Federation, he shall at once deposit his card in that union; failing

to do so, he shall be held for dues and assessments from the time he starts to work by the union within whose jurisdiction he may be employed.

Sec. 5. No withdrawal card shall be issued to any member of the W. F. M. except such members who are actually engaged in some occupation not included in the jurisdiction of the W. F. M., or one who permanently retires from the occupation specified in Article I of the Constitution. All dues and [345] assessments must be paid for the month in which the withdrawal card is issued.

Sec. 6. Local unions of the Federation shall have full jurisdiction over all members employed in the jurisdiction of their locals, subject, however, to the right of appeal described in Section 2, Article XI, of the Constitution.

Sec. 7. Local unions shall have power to name the amount to be collected as a reinstatement fee from members six months or more in arrears for dues and assessments.

Sec. 8. Secretaries shall place due stamps on members' cards for back dues collected for reinstatement or otherwise.

Interchangeable Cards.

Sec. 9. Transfer cards and withdrawal cards issued by any chartered labor organization shall be accepted by local unions of the Western Federation of Miners, subject to the rules and qualifications governing members of such locals of the Western Federation of Miners.

Transfer.

Sec. 10. Any member leaving the jurisdiction of

his union and going to work in the jurisdiction of another union of the Federation shall deposit his membership card with the Financial Secretary within fifteen days after going to work and pay all arrearages. The Financial Secretary receiving a member's card, shall within fifteen days notify the union in which the member has a card so that the member's account can be closed in the former union. All arrearages [346] collected other than local assessment, shall belong to the union receiving the membership card, and all advance dues which may have been paid shall be remitted, provided, however, that no advance dues shall be requested for the month in which transfer is made. Any member in good standing transferring from one local to another within fifteen days after going to work in the jurisdiction of the other local, upon signing the Constitution of the local union in which the transfer is made shall be entitled to all the rights and benefits of that local. When a member of a local union goes to work within the jurisdiction of another local and fails to deposit his card within fifteen days after going to work, he shall lose all of his rights and benefits in the union in which he holds membership.

Sec. 11. Any member working within the jurisdiction of a local union and refusing to deposit his card, shall be subject to a fine of not less than \$1.00 nor more than \$50.00, said fine to be left to the discretion of the local union.

Sec. 12. When a member of a local union goes to work within the jurisdiction of another and refuses to deposit his card, it shall be its duty to place

a fine against him and suspend him from any benefits whatsoever. Any Secretary accepting dues from a member who is in the jurisdiction of another local shall be subject to a fine of not less than \$1.00 nor more \$5.00. [347]

Article XIII.

Supplies.

Section 1. All withdrawal and notification cards of the Federation shall be made of uniform size, with stub attachment.

Sec. 2. The Federation has adopted, for the sake of uniformity, the following supplies, which must be procured from the Secretary-Treasurer, except in the Dominion of Canada, where blanks shall be printed to conform with the laws and usages of that country, as well as in conformity with this Constitution, and that the same may be printed in the Dominion of Canada, viz.: Constitutions, withdrawal cards, notification cards, quarterly report blanks, blank bonds for officers of unions, application blanks, ledger, day-book and cash-book, and that it be imperative on the part of all locals to use this system of bookkeeping. Provided, all membership cards and the authorized metal emblems of the Federation shall be procured from the Secretary-Treasurer of the Federation.

Article XIV.

Nominations, Elections and Installation of Officers.

Sec. 1. Nominations of officers in local unions shall be made from the floor. Nominations shall remain open for three regular meetings prior to election, when each Recording Secretary shall, within

ten days thereafter, forward the [348] names of all officers elected to the Secretary-Treasurer of the Federation, who shall compile a directory of the same and forward a copy of these directories to each local union. It shall be optional with each local union as to whether it shall hold annual or semi-annual elections. Installation of officers for local unions shall not take place until the first meeting in July or in January.

Balloting.

Sec. 2. All unions shall, on the demand of five or more members in good standing, take a secret ballot upon any question coming before the union.

Sec. 3. All ballots shall be uniform and names of all candidates shall be placed on one ballot.

Article XV.

Jurisdiction.

Section 1. The jurisdiction of the Federation shall extend to all states and territories and the Dominion of Canada.

District Unions.

Sec. 2. Where a majority of members voting in a district or state deem it necessary, they may organize a district or state union for the purpose of doing business for the district or state. Such unions shall apply to the Federation for, and receive a special charter, said charter to be issued at cost. Such district or state union shall be subordinate to the Federation, but shall be a higher authority than the [349] local unions of the Federation in its jurisdiction. All local unions of the Federation within the jurisdiction of a district or state union shall be

a member of said district or state union and recognize the authority of same.

Defunct Unions.

Sec. 3. When any local union has a membership of less than ten members in good standing, the charter of such local may be considered defunct, and surrender its charter and books to the Federation; and any member of the said union becoming desirous of joining another union of the Western Federation of Miners shall, by paying the dues and assessments he owed in his former union up to the time the books were turned over to the Federation, be transferred to the union to which he makes application.

Sec. 4. The property of defunct unions shall be held in trust by the Federation, and where local unions are reorganized within a period of one year, comprising of twenty or more members of the former local the property so held in trust shall be returned to the reorganized local, but when the locals are reorganized with less than twenty members of the former local, they shall have no claim on the property of the defunct union. At the expiration of one year from the date of the local going defunct the property shall cease to be held in trust and become the property of the Federation.

Sec. 5. Where two or more locals are situated in the [350] same locality or district, and one or more locals become weakened by loss of members or otherwise, they may, by a majority vote of each local interested, consolidate. All money and property shall belong to the union so consolidated, except the charter or charters of the locals ceasing to exist, said

charters to be forwarded to headquarters immediately. The unions so consolidated shall be held for all existing indebtedness.

Article XVI.

Section 1. Each local Financial Secretary must keep a record of all members that are expelled from local unions, and when a person is proposed for admittance into any local of the Western Federation of Miners, the Financial Secretary must first look at the list reported by the Secretary-Treasurer of the Federation and then report to his union the result of his investigation.

Correspondence.

Sec. 2. Each Secretary of the local union shall be required to keep a copy of all correspondence in a copying book suitable for that purpose.

Article XVIII.

Fines and Penalties.

Section 1. Any member who is under the influence of liquor, appearing as a delegate at any convention of the Western Federation of Miners, or failing to answer roll call without being excused by the President, shall be fined for [351] the first offense the sum of one dollar; for the second offense the sum of two dollars; for the third offense the sum of five dollars, and any delegate or delegates who shall have been guilty of such an offense shall be censured and reprimanded by the President, and the union to which he or they may belong shall be notified of his action.

Article XIX.

Legislation.

Section 1. The initiative and referendum shall

govern all legislation. Whenever a local in good standing, delegate or delegation in convention shall, by resolution, offer an amendment to the Constitution, the same shall be considered in the biennial convention, and by that body submitted to the members of the Western Federation of Miners, who shall vote upon the same within sixty days. All locals voting on a referendum shall use—

First. A blank record sheet for the names of all members voting;

Second. Printed ballots with the questions fully stated upon them, with the spaces, so as to vote for or against any question;

Third. That envelopes containing record sheets with names, report blanks, with totals of votes cast for or against all questions, shall contain no other matter, and the word “referendum” should be marked upon the envelope and the same shall not be opened until the date set for compiling [352] the votes of all locals.

After having received the approval of a majority of the members voting upon the question, it shall receive the signature of the President and Secretary-Treasurer, and become a part of the organic law. The Secretary-Treasurer shall canvass the vote on all referendum questions and make up a return sheet, setting forth the vote of each local, and furnish all locals with a copy of the same.

Article XX.

Emergencies.

Section 1. Whenever a vital circumstance, not otherwise provided for, arises and the same cannot in justice be deferred until the assembling of the

convention, the Executive Board may submit any important question so arising to a referendum vote of the entire membership in good standing, in the manner described in Section 1, Article XIX. The majority of such vote to govern in all cases submitted.

Sec. 2. Whenever a proposition of vital importance presents itself to the membership of the W. F. M., not otherwise provided for, the Executive Board shall, on demand of ten or more locals, submit all such matters pertaining to such proposition to a referendum vote through the Secretary-Treasurer, not later than fifteen days after receipt thereof; provided that no such referendum shall be submitted which is a reversal of a former referendum within one year. The majority of such vote shall be binding on all [353] parties concerned.

Sec. 3. This Constitution shall not be amended except by a majority vote of all delegates assembled in convention or by initiative petition adopted at three regular meetings of at least ten locals of this organization, representing at least five per cent of the whole membership, the same to be approved by referendum vote as described in Section 1, Article XIX.

ORDER OF BUSINESS.

1. Call the meeting to order.
2. Warden, secure the door.
3. Presentation of credentials.
4. Appointment of committees.
5. Roll call.
6. Reading of minutes of previous meeting.

7. Communications and correspondence.
8. Bills.
9. Reports of officers.
10. Reports of standing committees.
11. Special committees.
12. Unfinished business.
13. New business.
14. Election of officers.
15. Good and welfare of the Federation. [354]
16. Installation of officers.
17. Adjournment.

RULES OF ORDER.

During the continuance of the meeting silence must be observed, the officers and members retaining their respective seats, and no one leaving the room without permission of the President or Vice-President.

No member shall, by conversation or otherwise, interrupt the business of the Federation or refuse to obey the chair.

The President, while presiding, will state every question coming before the Federation, and immediately before putting it to a vote shall ask: "Are you ready for the question?" Should no member rise to speak, or by silence indicate their readiness, he shall rise to state the question, and after he has risen no member shall be permitted to speak upon it. He shall announce the result or decision of the Federation upon all subjects.

Every member, when he speaks or offers a motion, shall rise and respectfully address the presiding officer. While speaking he shall confine himself to

the subject under debate, avoiding all personalities and indecorous language, as well as any reflections upon the union or its members.

Should two or more members rise to speak at the same [355] time, the chair shall decide who is entitled to the floor.

No member shall disturb another in his speech unless to call him to order for words spoken.

If a member, while speaking, shall be called to order, at the request of the chair, he shall cease speaking and take his seat until the question of order is determined, when, if permitted, he may again proceed.

No member shall speak more than once on the same question until all the members wishing to speak shall have had an opportunity to do so, nor more than twice without the permission of the chair.

When any communication, petition or memorial is presented, before it is read a brief statement of its contents shall be made by the introducer to the chair.

No motion shall be subject to action unless seconded and stated by the chair.

Any member may call for a division on a question when the sense will admit it.

When a question is before the Federation no motion shall be received unless to close the previous question, to lay on the table, to postpone indefinitely, to refer, to amend, and shall have precedence in the order herein arranged—the first three of which shall be decided without debate.

After any question, except one of indefinite postponement or one the result of which the Federation

cannot reverse, has been decided, any member who voted in the majority may, [356] at the same meeting, move a reconsideration thereof.

No amendments shall be received except they are in writing.

All questions not provided for by the Constitution, By-Laws, Rules of Order, or by the General Laws of the Federation, shall be determined by a majority of the members at a regular meeting.

These rules may be suspended for a special purpose by a vote of two-thirds of the members present.

Roberts' Rules of Orders shall govern the proceedings of the Federation in the absence of any rules not herein provided for.

INDEX.

	Page
Organization and objects.....	3
Convention	3-5
Pay of Delegates.....	5
Nomination and Election of Officers, Execu- tive Board, and A. F. of L. Delegates....	5-8
Recall of Officers	8
Duties of President.....	8-10
Duties of Vice-President	10
Duties of Secretary-Treasurer.....	10-12
Executive Board and Duties of.....	12-14
Auditors' Appointment and Duty of.....	14
Reports of A. F. of L. Delegates.....	14-15
[357]	
Revenues and Disbursements	15
Penalty for Violation of Stamp System.....	15
Reinstatement Stamps	15
Official Journal	16
Strikes and Adjustment	16-17
Wage Agreements	17 and 21
New Unions and Jurisdiction of.....	18
Penalties	18
Duties and Privileges of Members.....	19-21
Trial by Local Union.....	19-20
Trial by Convention	20
Probation Members	20-21
Foreman and Shift Bosses	21
Unemployed Assessment Stamps	21
Receipts and Accounts	22
Password	22
Membership Card	22

Index.	Page
Withdrawal Cards	22-23
Reinstatement	23
Interchangeable Cards	23
Transfer	23-24
Supplies	25
Nomination, Election of Local Union Officers.	25-26
Ballotting	26
Jurisdiction of Federation	26
District Unions	26
[358]	
Defunct Unions	26-27
Expelled Members, Record of.....	27-28
Correspondence of Locals	28
Fines and Penalties of Delegates.....	28
Legislation	29
Emergencies by Legislation.....	29-30
Constitution, How Amended	30
Order of Business	31
Rules of Order	32-33

(Testimony of Charles Baxter.)

Cross-examination by Mr. HILTON.

The WITNESS.—I stated to the counsel that I was familiar with the phraseology or wording of the original charter, that I had seen it several times and read it and to the best of my recollection it did not contain any forfeiture clause, and that is right. I could not repeat just what it did contain. I have belonged to several labor organizations in different parts of the country, and the charters are pretty near all running in the same way as to their objects, and it seems to me that this charter was very similar to the old Knights of Labor charter, of which I was a member on different occasions. But one of the reasons which drew my attention to the forfeiture clause was that it was discussed and discussed repeatedly among members [359] of the union, by the individual members, and also as I stated before at at least one meeting that I was at. The only notice that I ever knew of or heard at all, by motion or evidenced by any record relating to the charter here whereby the charter was questioned because it contained that forfeiture clause, after the receipt of that charter by our membership, was when Pat Lee, who was Secretary-Treasurer, said he sent to Denver, and it was discussed under the head of good of the order. As far as my knowledge goes it was not discussed excepte as to the litigation of the matter. Now, I am speaking with reference to the last charter. There was an effort made to return this last charter to the Federation. It was offered to Mr. Mahoney one day when I was up paying my dues at

(Testimony of Charles Baxter.)

the office. That was the only tender that was made of the charter to return. I could not say whether that was done by reason of any order or action taken by the local. It was done by one of their officers. Pat Lee was the man who tendered that back, and was having a conversation with Mahoney. I cannot tell whether he was authorized to tender it to Mr. Mahoney by action of the local or not. He was one of the officers. Mr. Lee's action in tendering it back to Mr. Mahoney was never afterwards brought before the local to my knowledge. In my hearing at the time it was tendered back, Mr. Mahoney did not tell Mr. Lee that if it was the desire of the local to return it that there was a way to do it. Mr. [360] Mahoney said "I don't want it."

This is my signature attached to this document which has been marked Plaintiffs' Exhibit "F" for identification.

Document received in evidence, marked Plaintiffs' Exhibit "F," and is as follows:

Plaintiff's Exhibit "F"—Petition, November 23, 1914, of Members of Butte Miners' Union, No. 1 to President of Western Federation of Miners.

Butte, Mont., Nov. 23d, 1914.

To Chas. H. Moyer, President of the Western Federation of Miners, Denver, Colo.

We, the undersigned, members of Butte Miners' Union, No. 1, W. F. of M., hereby petition you under the constitution to take full and complete charge of the affairs of this union and submit as our reasons for requesting such action, that the officials and trus-

tees of said union have been and are acting in violation of the constitution of Butte Miners' Union and of the Western Federation of Miners and further that there has been utter inefficiency and disregard of the best interests of the organization and the principles of unionism.

We submit the following: (1) Violation of the constitution by packing the meeting with men in arrears, some of whose names were not on *on* the books of the union, giving them a voice and vote in matters of great importance. (2) Refusal of Secretary-Treasurer, aided and abetted by the president to submit books and accounts for examination. [361] (3) Failure of walking delegates to render any report to the union or put forth reasonable effort to increase the membership of this union. (4) Stamps on members' card without entry on books of receipt. (6) Willful waste in the disbursing of funds, especially the sick relief, the constitutional notice to secretary not being complied with. (7) That indifference to the welfare of the organization is clearly manifested by the failure of various officials and trustees to keep in good standing.

(Signed) Tim J. Lynch	Wm. Luma
Ed O'Byone	John Toomy
J. C. Lowney	Dan O'Leary
A. M. Maleta	Mike Harrington
Jalmer Koskinen	Dennis Murphy
F. H. Shields	Jacob Oliver
John Pearson	Charles Baxter
E. G. Huntley	W. H. Schauf
Oskal Karri	Patrick King [362]

(Testimony of Charles Baxter.)

The WITNESS.—This was the last of November, 1914, more than a month after the receipt of the charter that I have testified to. I could not give you the date of this conversation which I claim was had in my presence with Mr. Mahoney. At that time there was very little conversation. I was there to pay my dues. I was loafing around town and came up to pay my dues, and while I was there Mr. Mahoney came in and I went and picked up a Miners' Magazine and this conversation was on and I walked out leaving them there. That was all the conversation I heard between them with reference to the charter. That conversation took place after the time that they had entered suit on this petition, but any further than that I could not give you the date. I was off work all summer and was in the habit of going up to the office of the Miners' Union four or five times a week. It was in 1914, but I do not remember the month. I really could not state whether it was before the time I signed this application to the Federation to take over the affairs of the Butte Miners' Union No. 1.

Redirect Examination by Mr. BREEN.

Q. Who presented exhibit "F" to you?

Mr. GEAGAN.—To which we object as incompetent, irrelevant and immaterial.

Which objection was by the Court overruled, to [363] which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Guy Miller, the personal representative of C. H. Moyer.

(Testimony of Charles Baxter.)

The WITNESS.—Guy Miller is one of the members of the executive board. I cannot state who prepared this, and do not know of my own knowledge whether Guy Miller prepared it or not. I was in my own home when this was presented to me, and my home is on South Colorado Street, Number 2530.

I was in department two of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, when Guy Miller was on the stand and being interrogated in regard to this.

Q. Did you hear him testify at that time that he had, or admit that he had, gone to every individual whose name appears here, to solicit their signatures to this?

Mr. HILTON.—I submit that would be wholly incompetent.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Q. After this there was a suit brought by Mr. Miller and others in the District Court in regard to what is set forth here, was there not?

Mr. GEAGAN.—We object to that as calling for a conclusion of the witness, the best evidence being the record [364] itself.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Yes, sir.

Q. During all of the times and since the matter

(Testimony of Charles Baxter.)

was decided by the Supreme Court on the 3d day of July, last, you have been a member of the Butte Miners' Union, a corporation, defendant here, have you not?

Mr. GEAGAN.—To which we object, if your Honor please, as incompetent, irrelevant and immaterial; and on the further ground and for the further reason that there is incorporated in the question a statement which calls for a conclusion of the witness as to what was stated by the Supreme Court of the State of Montana; on the ground and for the reason that the Supreme Court of the State of Montana has never handed down any opinion or rendered an opinion as to what position they took, save and except to grant a supervisory control for the setting aside of a certain restraining order issued out of the district court.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I have been continuously a member in good standing since May, 1898, the last time.

(Witness excused.) [365]

Testimony of Jacob Oliver, for Defendant.

JACOB OLIVER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Jacob Oliver, and by profession I am a miner. I have lived in Butte thirty-one years, and most of that time I have been

(Testimony of Jacob Oliver.)

a member of the Butte Miners' Union, a corporation, defendant here. I was a member of the Butte Miners' Union prior to 1893. I became a member first in 1885. I recall the organization of the Western Federation of Miners.

Q. Mr. Oliver, prior to the Butte Miners' Union becoming a member of the local of the Western Federation of Miners, was there any argument or discussion as to what their rights, or what liabilities would be incurred by becoming a member?

A. There was considerable.

Mr. GEAGAN.—To which we object as incompetent, irrelevant and immaterial, and not within the issues of the case at bar, and that whatever discussions there were, if there were such discussions, were merged in the contract as evidenced by the charter of the Western Federation of Miners' to the Butte Miners' Union, a corporation, and that the same could not be contradicted by evidence relating to any discussion prior to entering into the contract upon any evidence not evidenced by any record, and if not shown [366] that there was any discussion taken by the organization as a corporation.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

Q. Will you state what was done and what examination and investigation or understanding was had before the Butte Miners' Union voted to become a member of the Federation?

(Testimony of Jacob Oliver.)

Mr. HILTON.—We object to that, unless the question goes farther and shows between who that understanding was had.

The COURT.—Any understanding; if there was any discussion let him state the substance of it with reference to what would be the effect of joining the Federation.

Mr. BREEN.—That is what I am aiming at.

The COURT.—Let him state that. You understand, he is asking you if anything of the sort took place in the Union.

A. In the Union Hall?

Q. That is what I mean. I don't mean anything on the sidewalk.

A. There were discussions for several meetings pro and con, as to the result of the Butte Union joining the Federation. In fact, I was one of the fellows who were opposed to the organization of the Western Federation, and I know— [367]

Mr. GEAGAN.—I move that that statement of the witness be stricken out.

The COURT.—Denied.

A. (Continuing.) —and I know one of the points that was asked of the fellows, you might say the opposition, was this: In case of trouble in the Coeur d'Alenes, there had been trouble over there, and our union was an incorporated body and the other unions were unincorporated, or voluntary associations, and there was any property destroyed or any lives lost, would we be held liable; and we were told frankly, no; and with that understanding we practically, well,

(Testimony of Jacob Oliver.)

we were unanimous, finally, in joining the Federation.

Q. Was there any discussion as to whether you saw fit to withdraw, or did not like your surroundings, that your property would be taken over or confiscated by the Federation?

Mr. HILTON.—Leading, and we object to it.

The COURT.—Sustained.

The WITNESS.—I recollect when the charter was issued. I could not say exactly what it contained. I saw it hanging there on the wall.

Q. Did that charter that you received contain a forfeiture clause of the kind that is referred to in this second charter or put in the pleadings here?

A. Not to my knowledge.

Mr. GEAGAN.—Just a moment. We object to that as leading [368] and suggestive, the witness having testified that he did not know.

Which objection was by the Court overruled, to which ruling plaintiffs then and there duly asked for and were allowed an exception.

A. Not to my knowledge.

The WITNESS.—I presume I read the charter lots of times, and I think I would have seen it if it were there. On the charter were a list of I think ten names taken from the old charter, or the original charter, members of the Butte Miners' Union; I think it was ten of the original names. I saw the last charter which was received, once.

Q. Did you observe at the time that you saw that,

(Testimony of Jacob Oliver.)

that that was or it was not a duplicate of the former charter?

Mr. GEAGAN.—We object to that as calling for a conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. That was very marked; the difference was very marked.

The WITNESS.—The difference was very marked, and anyone would notice the difference. My attention was called to the forfeiture clause in the last charter by, I don't know who, someone in the hall, one night, and the question was [369] brought up under the order of good and welfare, and I says, "I understood this matter was settled." Someone said, I can't say who, "Why, we can't accept this charter; it is out of the question. If we take this charter Moyer can come and grab our property any time." And I think it was Pat Leahy said, "We don't want this charter, and we *don't* have it, and we are not going to have it." The charter was never accepted or worked under.

Q. When you observed this charter, did that call your attention to this difference in the old charter as relating to the forfeiture of property?

A. Well, the most marked difference, of course, was the names. That would be the first thing a person would notice that had seen the old charter and the new, because you generally notice the names

(Testimony of Jacob Oliver.)

on a document of any kind; that is the first thing you notice is the signatures.

At this meeting in October of 1914, when the last charter was received, the members just passed it up, unanimously, that it could not be accepted. In fact, they hardly discussed it. I noticed one forcible remark made by Pat Leahy. He said, "We won't have it, and we ain't going to have it; we can't stand for anything like that." The reasons why it would not be accepted were discussed at that meeting, the forfeiture clause there which as Mr. Leahy said, "Why, Mr. Moyer can come here and grab the property, grab everything we got, if we don't comply with the rules [370] and regulations," or something to that effect, "of the Western Federation." I had several discussions with Mr. Mahoney in regard to the suit then pending in the court in the city of Butte here.

Q. Well, Mr. Oliver, did you in the city of Butte have a discussion with Mr. Mahoney about what he intended to do with the money of the Butte Miners' Union if he and others had been successful in the suit that was then pending?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, it not being material to the issues herein, for the reason it don't show it was between the same parties or for the same purposes.

Mr. BREEN.—There is some slight difference, I will admit that, between the parties, but it was for the same property in both instances.

Which objection was by the Court sustained, to

(Testimony of Jacob Oliver.)

which ruling the defendant then and there duly asked for and was allowed an exception.

The WITNESS.—At the time this Federation was organized in May, 1893, the Butte Miners' Union, this defendant, had property, and it consisted of the lot the hall was on, on North Main, and the loan of, I think, it was ten thousand dollars to Granite Miners' Union, and something like fifty or sixty thousand dollars in the bank. That property was accumulated from dues collected from the miners and members. The uses those dues were put to were to pay sick benefits, [371] funeral expenses, and payment of the officers who conducted the affairs of the union.

The money that built the hall, the first money, we got some money from W. A. Clark, he made us a loan to build the hall, but the money that paid for the hall came from the miners in shape of dues. The union owned a library at that time. The hall was not in the same condition it is now. It was a stone and brick building with offices and hall. It was considered one of the most substantial buildings in the city. It had two stores. I do not know the exact dimensions of it, nor could I tell exactly the width and length of it, but I think it was something like fifty odd feet wide and a hundred and forty feet long; or somewhere about that; I don't know exactly. The Western Federation of Miners never contributed one dollar to the property now owned or possessed by the Butte Miners' Union, or being owned or possessed by it, since the birth of the

(Testimony of Jacob Oliver.)

Western Federation of Miners, to my knowledge. I was a pretty regular attendant, and if they ever did, I should have heard of it.

Cross-examination by Mr. GEAGAN.

The WITNESS.—There have been several members of other unions, locals of the Western Federation of Miners, coming to Butte and transferring into the Butte Miners' Union, [372] the Western Federation of Miners; from the United Mine Workers, for instance, from unions in Europe and Australia; from unions in Colorado and in Utah, and in Nevada, and in California, and other different States. The Western Federation has no unions in Europe. I think these men also transferred from British Columbia. These men, whoever transferred into the Butte Miners' Union from other locals of the Western Federation of Miners, paid their dues and assessments into the union after they were transferred. Generally by depositing one dollar they became members in good standing. They have done that right along since the formation of the Western Federation of Miners, I believe, in 1893. When I spoke of Mr. Leahy having said something at a meeting of the Butte Miners' Union relative to the charter, I meant Pat Leahy, the policeman. Mr. Leahy said there was action taken by the union as an organization with relation to that charter that night that I speak of. To my knowledge, there was not. We never took a vote on it, my recollection. I couldn't say there was or was not; but I know at

(Testimony of Jacob Oliver.)

this meeting when that question was brought up by Mr. Leahy, he says, "We have got through with that." That was Mr. Leahy's statement. I could not say whether there was any motion made and entertained or not, and I do not recollect whether there was at any time I was present at the union. I never heard any such motion discussed on the floor at any time while I was present at the meeting. At [373] that meeting, if my memory serves me right, I was a little late when I came in, and there seemed to be a general understanding there that they refused the charter. Mr. Leahy made the most forcible remark. That was all that was done, I believe, at that meeting.

My signature appears on this document, Plaintiffs' Exhibit "A," which you have handed me. At that time I was a member of the Butte Miners' Union, and of the Western Federation of Miners. I don't know what became of the charter. My understanding was that it was returned to the Western Federation of Miners, but I could not say whether it was or not of my own knowledge. I saw it out in the office after the time I speak of that Mr. Leahy made these remarks.

Redirect Examination by Mr. BREEN.

The WITNESS.—Members came into Butte, journeymen miners came into Butte since the birth of the Miners' Union in 1878. When they came at that time, the first charge as I understand, as initiation fee, was one dollar. The initiation fee for a

(Testimony of Charles Baxter.)

new member was five dollars, and then after the miners began to organize, when a miner came along who was a member of the Miners' Union, providing he had a card, was accepted for a dollar. According to that, we would be four dollars short under that arrangement of what it was [374] before, for each member. They had come to Butte for a good many years before the Federation came.

Q. And at the time that Mr. Geagan refers to in reference to this second charter they sent in October, about the fifth or twelfth of October, the discussion that you had there was—were they discussing this forfeiture clause generally, not alone Mr. Leahy, but the members generally, at the time you referred to?

Mr. GEAGAN.—We object to that as leading and suggestive and improper redirect examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Well, it seemed to be the general understanding there.

Recross-examination by Mr. GEAGAN.

The WITNESS.—This five dollars that I speak of was always charged to the new members and was the regular initiation fee, I believe.

Q. And it was a dollar when he had a card showing his membership in some other union that was affiliated with you?

A. It didn't make any difference whether it was

(Testimony of Jacob Oliver.)

affiliated with the Western Federation or not.
[375]

It didn't cut any ice just as long as the man had a card showing that he was a union man in a labor organization, and he was admitted for a dollar if he came from Australia or Africa, or any State of the Union. That was not always the custom; I don't think that was always the case. That has been the case ever since before the Western Federation was organized.

(Witness excused.) [376]

Testimony of William E. Deeney, for Defendant.

WILLIAM E. DEENEY, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is William E. Deeney, and I am a stationary engineer. I came to Butte on the 10th day of January, 1885. In those days I was a miner and was mining in the Mat mine, at that time. I mined off and on for fifteen or sixteen years, at that time, sometimes for a company and sometimes for myself. I was a member of the Butte Miners' Union, a corporation, from four days after my arrival in Butte, and remained a member up to 1894 or 1895. I recall the time of the organization of the Western Federation of Miners, in May, 1913. I was a pretty regular attendant of the meetings of the Butte Miners' Union at that time, and I recall visiting the union during the time, visiting the Butte

(Testimony of William E. Deeney.)

Miners' Union during the times that the Western Federation was in session and delegates forming the Federation. I heard discussions in the Butte Miners' Union as to the purposes and objects of the Federation, and explanations made by the delegates and members of the Butte Miners' Union during that time. During this time referred to, in the early part of May, 1893, I heard discussions as to under what terms and conditions the Butte Miners' Union would accept a charter with the Federation and become one of its members. It was discussed for some time before [377] they adopted the charter. The discussion at that time which was very heated on one or two occasions was that we gave no permission to the Western Federation to have any claim to the property, money, or anything belonging to the local here in Butte. At that time the Butte Miners' Union owned the Miners' Union Hall, which was destroyed recently; and they had made a loan to the Granite Mountain Miners' Union, they had organized; they had made a loan to the Coeur d'Alene country in 1892, and they had, I think, between eighty and fifty thousand dollars in the bank.

When we first agreed to become a local of the Western Federation of Miners, I examined the charter presented to the Butte Miners' Union for its acceptance. It was presented to the members sitting on the east side of the hall by a member visiting here, I think by the name of McCoy, and we looked it over. I remember I did. This was a draft, and this draft was discussed in the Union. This charter

(Testimony of William E. Deeney.)

did not contain any forfeiture clause of the property.

I later saw the printed charter that was accepted by the union and hung on the wall. I think that was printed by Johnny Fogarty, who was then a member of the union, and was proprietor of the "By-Standard," a local paper here, and he asked, I believe, for the privilege of printing or doing that work at that time. There were a number of names on that charter, I don't know how many, the majority or nearly all of them are dead. The charter in [378] size was about fourteen inches by twenty-two inches or twenty-four inches, while I am not swearing to that, that is my recollection.

Q. Do you know whether or not this charter was examined for the purpose of preventing any forfeiture of the property or getting in any shape that would hold the property or the Butte Miners' Union liable?

Mr. GEAGAN.—We object to that, if your honor please, as incompetent, irrelevant and immaterial, unless it is shown by whom he refers to as making the examination.

Mr. BREEN.—I mean the members of the Butte Miners' Union in session.

The COURT.—You may answer.

A. That was the purport of the argument; that is what caused all the discussion, was to know whether it contained a clause of that kind or not, and on finding out that it contained no clause of that kind, I think you were the man that moved that it be

(Testimony of William E. Deeney.)

adopted, without that clause being inserted; I am sure you are.

The WITNESS.—At that time I am sure there was no forfeiture clause of any property or any property of the union. That is what caused all the discussion. That was the draft. Afterwards I looked at the print, and it was in accordance with the ruling of the draft. I examined the printed charter after to see if it was a correct reproduction of the draft. I remember on one occasion I had some misunderstanding [379] with James C. Duffy, who was afterwards secretary of the union in Granite Mountain, about a matter, and we travelled to the Hall and examined; and some others, and I examined it on several occasions. I mean when it was first presented, first accepted and hung up and framed. I examined it at that time and seen the printed form was the same. I am a member of the Western Federation at the present time, belonging to the Stationary Engineers, 83.

Q. What is the character of the membership? I believe that is all agreed, that it was a voluntary membership.

The COURT.—Yes, no doubt on that.

The WITNESS.—I know the purpose of organizing the Federation, the reason for organizing it. I know from prior discussions, that the intention was that there should be one general organization of miners in the State of Montana and in the west, that there should be one constitution and be *on* initiation, and that on the payment of one dollar they could be

(Testimony of William E. Deeney.)

transferred from one local to another. I have many times read the first constitution issued by the Federation of Miners.

Q. Did that constitution contain any forfeiture clause, or authorize the taking of the property of any withdrawing local from the Federation?

Mr. GEAGAN.—We object to that, if your honor please, as incompetent, for the reason that the constitution itself is the best evidence of whether it contains such a clause or [380] not.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. No, there was no clause of the kind to my knowledge in the constitution, that is the first constitution.

The WITNESS.—I have seen the constitution as amended from the birth of the organization, the various constitutions as they have been amended and brought down to date, but I have not perused or read them; I don't know what they contain. I don't know whether they contain that; don't know what has been added to them or taken from them.

The moneys and property of the Butte Miners' Union, a corporation, was accumulated by a dollar a month membership, by twenty-five cents per quarter and a dollar a year—I thought you asked about the Federation. The Butte Miners' Union paid a dollar a month. Further moneys were accumulated by picnics, by little entertainments, and by the renting out of the building and the hall after it was com-

(Testimony of William E. Deeney.)

pleted. This money that was collected from those dues and from entertainments and rentals was to be used for the support of widows and orphans, burying the dead and paying sick benefits to those who were unable to support themselves and paying dues. The Butte Miners' Union, from the time that I became a member of it, paid out of this fund funeral expenses and sick benefits for its members, and [381] took care of orphans and widows of its members regularly. They purchased a library, and I have mentioned loans to other unions. During the time that I was a member of the Butte Miners' Union, after the organization of the Federation of Miners, the Western Federation of Miners never contributed one dollar or one cent in money, or did they contribute any other property to the Butte Miners' Union, a corporation.

Q. And since the time that you have followed engineering, and been a member of Western Federation of Miners, are you familiar with what has been done by the Miners' Union for the Federation, and by the Federation for the Butte Miners' Union?

Mr. GEAGAN.—Now, we object, if your honor please, as incompetent, irrelevant and immaterial, not within the issues of this case.

Q. As a member of the Stationary Engineers and a local of the Western Federation of Miners, are you authorized to visit and allowed to attend meetings of the Butte Miners' Union?

Mr. GEAGAN.—To which we object as incompetent, irrelevant and immaterial, unless the time is

(Testimony of William E. Deeney.)

specified as to when he would be permitted to attend.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Yes, sir. [382]

The WITNESS.—I am familiar with the business dealings between the Butte Miners' Union, a corporation, and the Western Federation of Miners, during the years that I have been a member of the Engineers' Local up to the time of the withdrawal of the Butte Miners' Union; been familiar with the relationship between them, and during the period of time last mentioned the Western Federation of Miners never contributed one cent or one dollar or any other kind of property to the Butte Miners' Union.

Q. Mr. Deeney, the plaintiffs in this action have alleged that they have brought suits in actions of law on behalf of the union. What do you know as to that?

A. I don't know that they ever paid for the fighting of any suits, but I know that we paid for the defending of the Western Federation officers.

Mr. GEAGAN.—We object to the last statement of the witness as a voluntary statement and not responsive to the question, and ask that it be stricken.

The COURT.—Let it be stricken.

Q. Mr. Deeney, do you know of your own knowledge of the Butte Miners' Union, out of its local funds, employing counsel to defend the officers of the Federation.

(Testimony of William E. Deeney.)

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, and not within the issues of this case.

The COURT.—I can't see how it would affect the legal [383] situation at all.

The WITNESS.—This charter marked Defendant's Exhibit 3, the charter received by the Butte Miners' Union on or about October 5, 1914, is not a duplicate of the charter received by the Butte Miners' Union on or about the 15th day of May, 1893; it is not a duplicate of the one that was destroyed. It varies and differs from the one that I first saw, the original draft, and later the printed form of, with reference to that clause as to the property rights and so forth. I can't exactly word it as it is there.

Q. Are there any of the names of the honorary roll on this charter that was just shown you?

A. I didn't notice the names; I just read the witnesses in the center of it. Mr. Moyer and Mr. Miller, yes.

There are no names of the old charter members of the Butte Miners' Union that were referred to by Mr. Oliver as the honorary roll. It is hard to recall the names of the men that were on there, it is a long time ago,—John Eddy, one of the first members, and Bob Feltz, who was secretary in 1886—well I forget the names of those who were on it. I would not attempt to testify to the names.

Cross-examination by Mr. HILTON.

The WITNESS.—I do not remember when the first convention organization of the Western Federa-

(Testimony of William E. Deeney.)

tion of Miners was [384] dated. It might have been in the neighborhood of on or about the same time that I have testified that the Butte Miners' Union local obtained the charter, the 15th day of May. I believe it was exactly that day that the Western Federation of Miners was organized. I am not sure who was the first president of the organization. I think the name was Joe Thomas, but I am not sure. I don't remember the name of the president of the original organization, the first organization of the Western Federation of Miners, but I think the name was Joe Thomas. The original issue of charters was made or had by the Western Federation of Miners at that time, after being thoroughly discussed in the neighborhood of May, 1893, and about the time when the Butte Miners' Union received their first charter. I do not remember how many charters were printed by order of the Federation at that time. I saw the draft of that charter that was ordered by that body. I believe the man who did the printing, John Fogarty, showed it to me. I would say that the original charter first issued by order of the Western Federation of Miners did not contain the forfeiture clause. I am speaking of the charter the Butte Miners' Union had and not charters in general. I do not remember who signed the first charter issued to the Butte Miners' Union, as president and who as secretary. But I think I just stated I thought Joe Thomas was president. I have no recollection as to who was secretary. The [385] charter that I saw of 1914 contained that

(Testimony of William E. Deeney.)

clause that we objected to in 1893. The charter that was accepted in 1893, there was a heated discussion on one or two occasions about adopting it as presented by that committee from the convention, and by eliminating that clause it was adopted. I do not know that I ever saw any record of that action, but I should think that there was some made of it. There is nothing of record in existence now that I know of that would show what the action of the local was in the adoption of that charter. There is nothing of record that I know of on the part of the Butte Miners' Local repudiating the last charter of 1914. I don't know of any of the documents that now remain. I was present at a time when a discussion was had when that was objected to because it didn't conform to the other one and the action taken was that the local would not accept it as presented with that clause in it, the charter with reference to the forfeiture. That was in 1893, and I think it was in May, or the latter end of April. I think the result of their action was made a matter of record, but I am not sure. There was a motion made by Mr. Breen, who was then a member, that the charter be received by eliminating that clause, and it was seconded I think, by a man named Michael,—I am not sure—McLeod, and action taken that it be adopted by eliminating that clause. I think that was made a matter of record. Yes, it was a matter of consequence, and it would be. [386]

Redirect Examination by Mr. BREEN.

The WITNESS.—I do not know what has become

(Testimony of William E. Deeney.)

of the records of the Butte Miners' Union that were in existence and used at the time I referred to in 1893, since its birth, except by hearsay. I don't know what happened to it. I understand they were all destroyed on the 13th of June, 1914, or the major portion of them.

(Witness excused.) [387]

Testimony of Frank O'Connor, for Defendant.

FRANK O'CONNOR, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Frank O'Conner, and I have resided in Butte about twenty-seven years. I am a miner, and have been a member of the Butte Miners' Union. I joined the defendant, the Butte Miners' Union, in the month of February, 1891, and was a member of the Butte Miners' Union in 1893, during the spring months. I have held the offices of secretary, president, treasurer and several other offices in the Butte Miners' Union. I was president four or five terms, I believe. I could not tell you just exactly because on account of resigning as president I would not be able to tell you the correct date. I was a member of the Butte Miners' Union, this defendant, at the time of the formation of the Western Federation of Miners.

Q. Were you present at any meetings when any question of organizing the Federation or becoming a local of the Federation, prior to the 15th of May, 1913?

(Testimony of Frank O'Connor.)

A. Yes, I was at the meetings, but I couldn't swear that I remember anything just what happened. I was at the meetings, any number of them.

I was a regular attendant at the meetings when my shift was such that I could attend.

Q. And was this matter of becoming a local of the Federation [388] ever discussed while you were present prior to May 15, or on or about May 15, 1913?

A. I would swear that I heard it discussed, but then I could not give any day or date for it.

It was the regular discussion at the meetings, I know, but I could not give the dates. I have seen the charter received from the Western Federation accepted by the defendant, the Butte Miners' Union, bearing date of May 15, 1893, the first charter, and have examined it.

Q. Describe it as far as you can generally; I mean, describe, that is as far as contents and what was on the face of it, as far as you can, generally.

A. From the discussion that come up at the meetings on the charter, I have formed my opinion—

Q. Well, from what you seen, I mean.

A. Yes,—

Q. Well, tell us what that was. What did the charter provide, do you understand me?

A. I do, yes.

The COURT.—Well, let him take this Aspen charter and read it over and tell us what difference there was.

A. I will answer the question, if your Honor

(Testimony of Frank O'Connor.)

please, on them grounds. When the new charter came in, that is the time I offered my objections right in the hall; I offered my objections to this charter, that is, the new charter. [389]

Q. I don't mean the new charter. The one I am talking about is the old one, the first charter received, that was in use until destroyed on the 13th of June, 1914; the old charter and not the new one, do you understand me?

A. I do. I seen the charter and read it over.

The WITNESS.—It did not contain a forfeiture clause of the property of the Butte Miners' Union. I recall the Butte Miners' Union, this defendant, applying for a reissuance of this charter that was destroyed on June 13, 1914. I was in there, I believe, when it was taken up there. I recall the arrival of the charter that came about that request. This charter that was received some time in the early part or the middle part of October, 1914, was not a duplicate or reissuance of the charter that had been destroyed and that had hung for years on the wall. It differed in that they controlled the whole property; they would take all our property; that is, they would take the Butte Miners' Union property under the clause they had in here, by accepting the charter they would take all our property and we objected to it.

Q. Was this charter that arrived in October, 1914, ever accepted by the Butte Miners' Union, the defendant here?

(Testimony of Frank O'Connor.)

Mr. GEAGAN.—We object to that as a conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for [390] and were allowed an exception.

A. I was not at the meeting that it was accepted or rejected, but we objected to it before the meeting. The charter was not brought before the meeting at any time I was present and any attention called to it or any discussion had on it as I remember; not at a meeting, but it was called to our attention outside, before the meeting. At that time some of the members that were there talked it over and said, "That charter is no good," and said not to accept it.

Q. What action was taken, if any, that you know of at the meeting?

A. I was not at the meeting.

Q. I mean at a session of the Butte Miners' Union?

A. Well, I was not at the meeting that it was rejected.

Q. Well, what do you mean when you say, "rejected"?

A. Well, it was rejected before it went to the meeting.

We rejected it before it went to the meeting. I was not at the meeting it was taken up. When the charter came it was read over, and I think Mr. Leahy and some of them objected to the clause in it, and we decided that we would not accept it, that is, not at the meeting, but outside of the meeting. That

(Testimony of Frank O'Connor.)

was some time prior to the meeting night. I do not know what was done at the regular meeting night.

During the time that I was a member of the Butte [391] Miners' Union here, prior to 1893, the Butte Miners' Union had a constitution and by-laws. There ought to be some of those constitutions in existence now; I might have one home myself; I believe I have of 1893, but maybe not.

Q. Do you know whether or not there are any of them preserved by the Butte Miners' Union, the defendant here, or any of them saved out of the wreck of 1914, June 13th?

Mr. GEAGAN.—We object to that as immaterial, the witness testifying he very likely has one himself.

The COURT.—He may answer.

A. I don't know that I have; I might have one.

The COURT.—You were asked whether or not you know if the Union has preserved any or not.

A. The Union has not preserved any.

Q. Do you recall whether or not there was a provision in the constitution in use in 1893, the constitution of the Butte Miners' Union, the defendant here, providing for the payment of funeral expenses and sick benefits and the care of dependent ones of deceased members?

Mr. GEAGAN.—To which we object, if your Honor please, that the best evidence, it appearing that the witness now on the stand likely has one of these constitutions in his possession at his home, and that being the fact the instrument would be the best evidence itself.

(Testimony of Frank O'Connor.)

The COURT.—He may answer now, and produce it this afternoon, if he has one, and introduce it in evidence. Overruled. [392]

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. During the time that I have been secretary there was a standing offer that no member would have to be buried in a pauper's grave.

The WITNESS.—There was a provision in the constitution providing for a certain amount each week during sickness, and a certain amount for funeral expenses, and so on. That provision remained during the time that this Butte Miners' Union was a member of the Western Federation of Miners, after 1893, up to the 13th of June, and later there have been funeral benefits paid. I mean the 13th of June, 1914, the destruction of the hall. The Butte Miners' Union, a corporation, the defendant here, owned property in 1893, and that consisted of their hall; they loaned money to the Granite Miners' Union, also a corporation; and they loaned to the Black Hills,—I could not answer prior to the Federation, the organizing and joining the Federation. They did have property prior to 1893. They owned the hall and they owned money besides, and it was, I believe, in the Clark's bank at the time.

Cross-examination by Mr. GEAGAN.

The WITNESS.—I have looked over Plaintiffs' Exhibit "D," [393] and it is not similar to the original charter of the Butte Miners' Union, in the

(Testimony of Frank O'Connor.)

respect of the forfeiture of our property, and that respect is "all moneys, books and property of the Western Federation of Miners." That is the part that we objected to. As far as I know that is the part that I objected to myself. I am just pointing out the objection we made to the new charter and that is all. I could not say whether this charter upon its face, with the exception of the names, is similar to the original charter of the Butte Miners' Union in all appearances or not. I know these names, the honorary roll on this charter here; I know all of them, but I could not say whether their names were on the old original charter or not. I did not strike out the name of J. F. Poynter on that charter, and I don't know whether that was done or not. I know nothing about it being done. I would not say those names were on the old charter. I know Cunningham and Malloy, and they were members of the Union. The only difference that I can see is the objection I made to the other charter when it was tendered, and when I speak of the difference in the charters I am speaking from the objection I made to the new charter issued in 1914.

I was not present at the meeting the night after or the night that this discussion came up that Mr. Leahy made these remarks with regard to the charter; I was not there then; I don't know whether I was there or not. I have been pretty attentive to the meetings of the Butte [394] Miners' Union during the fall of 1914 and the spring of 1915. At any meeting which I was present during the fall of

(Testimony of Frank O'Connor.)

1914, and after this charter of 1914, arrived, and the winter or spring of 1915, there was no action taken at any meeting of the union rejecting this charter, that I know of. I might be on the night shift. A meeting I would be present at, if it had been, I would be likely to know it, but I would pay no attention to a little thing like that.

Q. Then, if you would not pay attention to a little thing like that occurring at the meeting, you would not pay very much attention to a little discussion that came up outside of the meeting either, would you?

A. What do you mean, the discussion of the charter?

Q. Yes. A. Yes, exactly, so I did.

Q. Then it would be so unimportant you would lead us to believe now that if it did come up in the meeting you would not pay any attention to a little thing like that, but it would be so important as a matter of discussion by Mr. Leahy any anyone else who happened to be present outside of the meeting, that you would attach a great deal of importance to it, and remember it. Is that the idea you wish to convey to us now?

A. I conveyed the idea that was in my mind at that time, and is in my mind right now, that we decided that the charter was no good and that we would not accept it. [395]

By "we" I mean the members of the Miners' Union right in the hall at the meeting held before the meeting. The members who were present were

(Testimony of Frank O'Connor.)

the members of the Union who made this decision. I could not very well remember now who they were. I know that Leahy and I talked over that. Leahy was one of them, and there were several members, and we decided right there that it would not be accepted. That was not in the meeting. I am not saying it was at the meeting. It was outside when it was rejected. There was no special meeting; it was just a members' meeting. Some of them happened to meet there in the hall. The only one I remember is Pat Leahy. There were other members there; there were perhaps five or six, but I don't remember who they were. I could not swear when that was, the day I am speaking of. I was not present at a meeting of the Butte Miners' Union subsequent to the time that the charter of 1914 came up at which any action was taken with regard to this charter.

Redirect Examination by Mr. BREEN.

The WITNESS.—The meeting place that I referred to at that time of the Butte Miners' Union was 217 North Main. There was a Secretary out there receiving dues during the day, and it was the customary hanging out place for members who happened to be down town, a place where they dropped in.

(Witness excused.) [396]

Testimony of Pat Leahy, for Defendant.

PAT LEAHY, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Pat Leahy, and I have been a resident of Butte nineteen years and a half. I have been a miner ever since I have been here except for the last six or seven months. I have been a member of the Butte Miners' Union and was a member of the Butte Miners' Union during the year 1914, and have been such member since October, 1896. I did not during the time I was a member of the Butte Miners' Union, observe or examine the charter of the Butte Miners' Union received from the Western Federation of Miners during the month of May, 1893, because I was not a member then, but did examine it since I have been a member. The charter that I now refer to did not contain a forfeiture clause of the property in case of a withdrawal, suspension, or dissolution. I guess that charter that was received in 1893, was blown to hell, or some other foreign country, wherever it went, I don't know, but the hall was blown up. I never saw it after the 13th of June. I was present when an application was made for a reissuance of that charter. I read the charter that came in response to that request and told the boys that it would not be advisable to accept because there was a clause in it that did not suit me, and that changed the intent and purposes of the former charter. [397] Defendant's Exhibit 3 is the one. There were other differences besides the for-

(Testimony of Pat Leahy.)

feiture clause referred to in this charter, Defendant's Exhibit 3, and the charter that had been hanging on the wall. There was only the names of Mr. Mills and Mr. Moyer on the new charter and there were the names of about twenty, I believe, charter members of the Butte Miners' Union, No. 1, on the previous one.

Q. When you say "charter members," do you mean charter members of the original organization?

A. Yes, sir.

Mr. GEAGAN.—Just a moment, we object to that—

Mr. BREEN.—It is not finished yet.

Q. Or members of the other Federation?

A. No, I mean the original.

Mr. GEAGAN.—Just a moment, we object to that as incompetent from this witness, no showing that the witness knew who the original members of the Butte Miners' Union were.

The COURT.—Overrule.

The WITNESS.—Defendant's Exhibit 3 arrived in Butte some time in October, 1914. There was a bunch present when it was opened and examined. I forget their names now; couldn't recall their names; quite a bunch in the room before we went to the meeting.

Q. What was done at the meeting, or was this charter taken up at the meeting? [398]

A. I made a little talk about this proposition of the charter and said how it read, "Well," they said, "It ain't worth making a motion about it."

(Testimony of Pat Leahy.)

That was in our meeting hall, North Main, during the meeting.

Q. What was the discussion with regard to the forfeiture of the Miners' Union property by the terms of the charter that meeting that you refer to?

A. Well, they were holding the property,—

Q. Well, I asked you if there was a discussion, if the contents of the charter was discussed?

A. No, they said it was not worth discussing. I don't know who said it was not worth discussing; some of the boys that were there; I don't recall now; couldn't recall his name, but some of the boys that were there at the meeting. At that time they threw it in the waste basket, because the charter read that the W. F. of M. was to take our property, money, and everything belonging to the local here, under the conditions of the charter I guess, providing that we did not suit them. The charter received did not comply with the request for a charter. They read the charter previous to the meeting in the assembly room, read it over, and I says, "Boys, here we go, if we will accept this charter." So when I brought it up at the meeting in talking about it, they said, "Don't waste your time," under the head of good and welfare of the meeting, and when I [399] brought up this matter they said, "Throw it in the waste basket." The sum and substance of the charter was to take away all our property and money, and everything belonging to us and ours.

Q. Well, did you or did the Butte Miners' Union,

(Testimony of Pat Leahy.)

a corporation, receive any correspondence, or were they in any manner recognized, or receive any quarterly reports from the Western Federation of Miners, after this month of October, 1914?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness as to the quarterly report, and its reception or nonreception, would be immaterial to the issues in this case.

The COURT.—Overruled.

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr. O'Neill, except by lawsuits since the date of that letter?

A. No, sir.

Mr. GEAGAN.—We object to that as irrelevant and immaterial, and calling for the conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception. [400]

Cross-examination by Mr. GEAGAN.

The WITNESS.—I have never before seen Plaintiff's Exhibit "D" in this case, which you have handed me for inspection. I have examined it. It is not similar to the original charter of the Butte Miners' Union received in 1893. There is a good deal of difference there that I would have to go through. It differs in this respect: "It is hereby agreed in acceptance of this charter that the aforesaid union shall

(Testimony of Pat Leahy.)

conform to the terms, rules and regulations, and in default thereof this charter may be revoked." That was not in the old one. With the exception of that it is the same as the old one, in the body of the charter, but in the old one the names of the members, the charter members; in our old charter, the names of the charter members were in it right underneath the charter members. I could not say that the names underneath were the same as the names underneath on this one; I couldn't give you the names that were there. That charter was signed by John Gilligan and W. J. Weeks, as president and secretary, but that is the Aspen charter of Colorado, and our charter belonged to Butte, Montana.

Q. The Aspen one was one of the original ones of the Federation, was it not?

A. I didn't look it over that close.

Q. Then you don't know whether that was or not, do you? [401]

A. Well, it was the Aspen Miners' Union, certainly it was a local.

It was some meeting in October, 1914, I couldn't exactly tell you, that this charter was thrown in the waste basket. It was not thrown in the waste basket till after when we offered it to Mr. Mahoney and he would not take it. That was not at a meeting. To the best of my recollection I believe it was Mr. Lee who threw it in the waste basket. I could not exactly say that I attended all the meetings during the fall and winter of 1914 and spring of 1915, of the Butte Miners' Union, but attended quite regularly, I was

(Testimony of Pat Leahy.)

a regular member and took an active interest. I was elected an officer during the year 1915.

Q. Now, at any of the meetings that you attended during 1914 and 1915, after the receiving of this charter, was there any action taken at the meeting rejecting this charter?

A. Well, they would not even take it into consideration after reading it.

Q. Will you please answer my question. (Question read.) A. Yes, there was, sir.

That was at a meeting some time in October, but I could not exactly tell the date of the meeting. At that meeting I talked the charter, and they said, "It ain't worth talking about. Throw it in the waste basket." I don't know who said that; some of the boys that were present [402] in the hall; members. That was at a meeting, but I don't know who were present at that meeting; I couldn't say who were present. I am not taking a memorandum of everybody that were present at the meeting. I don't think there was any motion made with regard to the rejecting of it. It was just simply the expression of somebody present to that effect, to throw it in the waste basket. They didn't think it was worth a motion. The remark that I have stated to you was merely the expression of everybody present at the meeting; everybody present said that, and they were members of the Butte Miners' Union. I could not tell you who they were, as I told you previous to this. They all expressed their opinion at once. All at once said, "Throw it in the waste basket." There was no action at any other

(Testimony of Pat Leahy.)

meeting at which I was present with regard to this charter in 1914 and 1915. In 1914 or 1915, but I couldn't recall the date of the meeting, a written communication was ordered forwarded to the Federation, with regard to this charter, at which meeting I was present. I could not recall the man who made that motion. It was a motion that they would not accept it. I don't know who made the motion. I don't know whether such a resolution was ever sent. I wasn't the secretary. I would not positively state whether that resolution was in the form of a written resolution or an oral resolution, and I don't know who made it. That was after the waste basket incident. The waste basket incident [403] that I now refer to was at the time it was handed to Mr. Mahoney. The tender to Mr. Mahoney was made in the office of the organization, Butte Miners' Union, in the office of the anteroom of the Butte Miners' Union. I couldn't state for sure who were present. I know Mr. Lee was the man who handed it to Mr. Mahoney, and he wouldn't take it. That was not at a regular meeting of the Union.

Redirect examination by Mr. BREEN.

Q. At the time that this reference was made that it was not worth considering, was there any statement made as to why it was not worth considering?

Mr. GEAGAN.—We object to that as repetition, having been gone into on direct examination, leading, and suggestive.

Which objection was by the Court overruled, to

(Testimony of Pat Leahy.)

which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Because we had read in the charter that all moneys and properties belonging to the local was to become the property of the W. F. of M. and there was only two names signed to it, that is the secretary and president of the W. F. of M.

Q. Your attention was called to this Aspen charter, known as Plaintiffs' Exhibit "D," and Mr. Geagan asked you [404] if it was similar, and you read, "further agree that should the aforesaid union—further it is agreed that should the aforesaid union withdraw, or be dissolved, suspended or forfeit this charter, then the property, moneys, books and papers shall become the property of the Western Federation of miners." Was that in the original charter that was lost or destroyed June 13th, 1914? A. No, sir.

Mr. GEAGAN.—Just a moment. To which we object as improper cross-examination, irrelevant and immaterial, leading and suggestive.

Which objection was by the court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

Q. Then when Mr. Geagan asked you if, ending at the words "Western Federation of Miners," if it was similar in other respects, did you mean to give the Court the impression that the forfeiture clause that was not read at the time, was in the old charter?

A. No, sir.

(Witness excused.) [405]

Testimony of David J. O'Connor, for Defendant.

DAVID J. O'CONNOR, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. BREEN.

The WITNESS.—My name is David J. O'Connor, and I hold the official position of deputy clerk and recorder of Silver Bow County, Montana. I have with me the original Articles of Incorporation of Butte Miners' Union, a corporation, which is the document I hand you. It is a permanent record of this county.

Mr. BREEN.—I now offer this in evidence.

Mr. GEAGAN.—To which the complainants object on the ground and for the reason that the corporate identity of the plaintiff is alleged in the bill of complaint, and is admitted in the answer, and that the same would merely be surplusage, tending to encumber the record, and it would be incompetent, irrelevant and immaterial, since it is admitted in the pleadings.

The COURT.—The objection is overruled. If they are not entitled to any weight the Court will give them none.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

Which said document is as follows:

Articles of Incorporation of Butte Miners' Union.

KNOW all men by these presents;—that we the undersigned, residents of Silver Bow County, Montana Territory, [406] pursuant to a resolution of the Butte Working Men's Union (whose name has since been changed to that of the "Miners' Union,"

being an association of miners and others) adopted at a meeting held for that purpose in Butte City, of said County and Territory, prior to the signing and sealing of these presents, which resolution is as follows, to wit:—

“Resolved, that the trustees of the Butte Working Men’s Union, to wit:—Eugene Sullican, Charles S. Shoemaker, Michael Grace, James Cardigan, and Henry Rodda be, and are hereby authorized to incorporate this union, and for that purpose to file with the proper officer such certificate as is required by law; and that said trustees shall conduct the affairs of the corporation so formed until their successors are elected at the next annual election held for that purpose,” do this day hereby associate ourselves together for the purpose of incorporating said association under the laws of the territory of Montana: That said association shall be known by the corporate name of “The Miners’ Union,” and we hereby certify that the objects for which this corporation is founded are: To protect the interests of the membership of said association, and to enable it to hold such property as may be necessary for the promotion of its good and the advancement of the interest of the same, and to enable it to establish subordinate organizations, and to become a body politic and corporate in law and to this end. [407]

1st. The property of said association shall be held by the trustees thereof, and their successors in office, as such, with the exception of money, which shall be held by the Treasurer of said corporation.

2d. The trustees shall have power to sell, lease or mortgage any real estate or other property the corporation may have, or may hereafter acquire, for the purpose of enabling said corporation to erect and maintain a Hall for the meeting of said society, to wit:—The Miners' Union.

3d. The trustees shall have power in their discretion to issue stock which shall be unassessable, for the purpose of building and maintaining said Hall, but said stock so issued shall not exceed in amount the sum of Ten Thousand Dollars (\$10,000).

4th. Said incorporation may at any time, provide itself or the public with a public or private library, and may lease or rent any portion of any property owned and not otherwise used for said purpose.

5th. Said incorporation shall have power to sue and be sued, to plead and be impleaded in their corporate name.

6th. Said incorporation may have a seal which may be changed at pleasure.

7th. That said trustees shall hold their office until the first annual meeting *in* in March, A. D. 1882, or until their successors are elected, and that thereafter a board [408] of trustees consisting of not less than *five*, nor more than nine, who shall be members of said society, or incorporation, "The Miner's Union," shall be elected for the period of one year, or until their successors are elected, and that in case of any vacancy happening in said board of directors, said corporation shall have power to elect one or more of its members to fill such vacancy or vacancies, at any meeting after the happening of the same: That as

soon after the election of said trustee, or any of them, as may be, the President of said incorporation shall issue under his hand and the seal of said incorporation, a certificate of election to each of said trustees so elected, which shall be good and sufficient authority for authorizing said trustees to act for said incorporation.

8th. Said incorporation shall be subject to such rules and regulations as it may now have for its government, or may hereafter enact, provided they are not contrary to these Articles of Incorporation.

9th. Said incorporation shall have power to establish branch organizations, which shall be subject in their government to the rules and regulations of this society, to wit: "The Miners' Union"; but in all other particulars they shall be free and independent; That when any nine persons desire to establish a branch organization they may apply to the President of the Union, who may, in his discretion authorize the institution of such branch society, [409] and shall, when so established, grant to said branch society, a Charter, signed by himself and the Recording Secretary, and attested under the seal of said incorporation.

10th. That the private property of the members of this incorporation shall not be subject to the corporate debts of the same.

IN WITNESS WHEREOF, we have hereunto

set our hands and seals this 18th day of April, A. D. 1881.

CHARLES S. SHOEMAKER. [Seal]

EUGENE D. SULLIVAN. [Seal]

MICHAEL GRACE. [Seal]

JAMES CARDIGAN. [Seal]

HENRY RODDA. [Seal]

Territory of Montana,
County of Silver Bow,—ss.

On this 18th day of April, A. D. 1881, before me, the undersigned, a Notary Public in and for the Territory of Montana, personally appeared James Cardigan, Eugene D. Sullivan, Harry Rodda, Michael Grace and Charles S. Shoemaker to me personally known to be the persons described in, and who executed the foregoing instrument, and who severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned. [410]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year in this certificate above written.

[Notarial Seal]

(Signed) CHARLES S. WARREN,
Notary Public, Montana Territory.

State of Montana,
County of Silver Bow,—ss.

I, Dave Kehoe, County Clerk and Recorder of said county, do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as filed for record in my office on the 4th day of May, 1881.

(Testimony of David J. O'Connor.)

Attest my hand and seal of said Silver Bow County, Montana, affixed this 12th day of Feby., 1916.

DAVE KEHOE,

County Clerk and Recorder.

By D. J. O'Connor,

Deputy.

[Seal of Silver Bow County.]

Documentary Stamp, 10c.

[Endorsed]: Articles of Incorporation of The Miners' Union. Filed for Record May 4", 1881, at 40 min. past 9 A. M. A. C. Witter, Clerk and Recorder of Silver Bow Co., Montana Terr.

Mr. BREEN.—Perhaps we can shorten the record, if [411] counsel for the plaintiffs will agree, that we renewed the corporate existence in the proper time and within the proper manner.

Mr. GEAGAN.—Yes.

Mr. BREEN.—That may be admitted. And that later, because of an error in some place in South Dakota there was an amendment to the title, the word "The" being inserted in the name of the corporation, instead of "Butte Miners' Union."

Mr. GEAGAN.—We will admit it.

(Witness excused.) [412]

**Testimony of Charles Baxter, for Defendant
(Recalled).**

CHARLES BAXTER, a witness heretofore on the stand, being recalled by defendant, testified as follows:

Direct Examination by Mr. BREEN.

Q. Mr. Baxter, yesterday your attention was

(Testimony of Charles Baxter.)

called to your signature appearing on an article here, Plaintiffs' Exhibit "F," and you were asked if you signed that article, or that document. Now, why did you sign it?

Mr. GEAGAN.—We object to that, if your Honor please, as irrelevant and immaterial, and not proper examination as to the instrument. The instrument itself shows the reasons why it was signed, and those reasons it appears to state upon its face.

The COURT.—What are you offering it for?

Mr. BREEN.—I am offering it to show that upon an investigation by this witness after his signature being on there, that he found that the facts were not as represented in that document, and represented to him by Mr. Miller.

The COURT.—Well, I doubt if it is material, but if that is the purpose he may answer. The objection is overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. Mr. Miller came to me and explained the clause in the constitution of the Western Federation of Miners which had been adopted showing where the officials of the [413] Federation had power to take charge of the affairs of the union under certain conditions, which were that there should be charges preferred and proven against the officers, and that they should be deposed from office and a new election called. And he asked me what I thought of the matter, thought of the way the office was being con-

(Testimony of Charles Baxter.)

ducted, and he went on talking that way, and so I signed the petition, and he said then, after I signed it—

Mr. GEAGAN.—We object to what was said after signing it.

Which objection was by the Court sustained, to which ruling the defendant then and there asked for and was allowed an exception.

A. I have not explained why I signed it yet.

Q. Was there any other reason given by Mr. Miller than the one you have stated?

A. Yes. That we should have a fair election and elect a new set of officers afterwards, but before such an action could take place the regular election came on and there was a new set of officers elected, and then the Federation still brought suit to forfeit all the property, so that I didn't think then that he was sincere in his petition.

Mr. GEAGAN.—We object to the conclusions of the witness, if your Honor please, and ask that they be stricken.

The COURT.—Yes, the latter part of the answer may be [414] stricken.

(Witness excused.) [415]

Testimony of James J. Maher, for Defendant.

JAMES J. MAHER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—On the first day of September, 1896, I became an officer in the Western Federation

(Testimony of James J. Maher.)

of Miners. Charters were issued during my term of office. There were a number of our charters, the Western Federation of Miners charters, returned for certain reasons. Some of the locals went out of existence, and some became dissatisfied. The Granite Mountain Union withdrew from the organization because it was dissatisfied. At the time the Granite Mountain Union withdrew from the Western Federation of Miners, the Western Federation of Miners did not attempt to claim to own or control or secure possession of its property; they did not do anything about it.

Q. At that time the Granite Mountain Miners' Union owned a large hall and considerable property, did it not? A. Yes, sir.

Mr. GEAGAN.—We object to that as irrelevant and immaterial

The COURT.—It might be a circumstance in actions of this character whether or not a forfeiture clause was in the original charter of the defendant. The objection is overruled.

To which ruling the plaintiffs then and there duly asked for and were allowed an exception. [416]

The WITNESS.—There was no claim made as to the ownership of any property owned by any local that withdrew from the Western Federation of Miners during my term of office. There was scarcely any property in any local that became defunct, outside of the Granite Mountain property. Other property was just the charter and rituals and books. Outside of that no property was returned. I was an officer from September 1st, 1896, to June 1st, 1901.

(Testimony of James J. Maher.)

Cross-examination by Mr. GEAGAN.

The WITNESS.—Those books was all the property the other unions had, outside of the Granite Mountain. The Federation never brought any action against the Granite Mountain. I do not say that the charter of the Granite Mountain Union did not provide for the forfeiture of its property or the turning over of the property. They returned the charter and everything belonging to the Federation. I don't know whether it contained that same clause or not. They returned the charter as it was and I did not look it over. It was the same charter as the other; the same as the Aspen charter.

(Witness excused.) [417]

Testimony of Pat Lee, for Defendant.

PAT LEE, called as a witness on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Pat Lee and I am a miner, having resided in Butte going on seventeen years. During that time I have been a miner. I have been a member of The Butte Miners' Union since May, 1898.

Plaintiffs' Exhibit "C" contains my handwriting and it is a letter from me to Mr. Mills, bearing date of November 24, 1914. After the mailing of that letter The Butte Miners' Union, a corporation, was never able to receive any communication or any recognition or any reports that the constitution provided should be sent to the various locals from the Western

(Testimony of Pat Lee.)

Federation. I did not write for them.

Q. Was there anything of an official character passed between The Butte Miners' Union and the Federation. I mean of a fraternal, not a legal character?

A. A petition for the recall of the officers. That petition for recall was that The Butte Miners' Union drew up a petition to recall Charles H. Moyer, president of the Western Federation of Miners, and John P. Lowney, a member of the executive board, and against Miller of the executive board. The Western Federation of Miners, when these petitions were sent out, wrote letters to all locals [418] and said it was not an official act of the Butte Miners' Union at all. This petition for recall was prepared over the signatures, proper signatures and seal of the organization. This letter which I show you is a copy of the letter which Mr. Moyer sent out. When this petition for the recall of officers was sent out, The Butte Miners' Union, a corporation, the defendant here, was never notified by the general office of the Western Federation of Miners of what returns were made or what was done. The Butte Miners' Union received no official notification whatever of the result of this recall from the Federation.

Mr. BREEN.—We now offer the document known as Defendant's 4 for identification, the one identified by Mr. Lee, the witness on the stand, as a circular letter from Mr. Moyer.

Mr. GEAGAN.—To which we object on the ground and for the reason that the same is incompetent, ir-

(Testimony of Pat Lee.)

relevant and immaterial to the issues involved at bar, the document affirmatively appearing on its face to relate to a public communication in the papers and press; that it does not relate to any action or communication which was placed in the hands of the Western Federation of Miners, and that the same is not relevant or material or competent to bind the parties to this action in relation to the contract now before the court for interpretation upon the evidence.

The COURT.—If the document is entitled to no weight, [419] the Court will give it none. Overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

Which said document is as follows:

**Defendants' Exhibit No. 4, for Identification—
Letter, December 16, 1914, President Western
Federation of Miners to Officers and Members
of Local Unions.**

Independence. Education. Organization. Western Federation of Miners. Officers. Chas. H. Moyer, President, 503 Denham Building, Denver, Colo. C. E. Mahoney, Vice-President, 503 Denham Building, Denver, Colo. Ernest Mills, Secy-Treas. 503 Denham Building, Denver, Colo. John M. O'Neill, Editor, 503 Denham Building, Denver, Colo. Executive Board. J. C. Lowney, 450 N. Idaho St. Butte, Montana. Yanco Terzich, Angels Camp, California. Wm. Davidson, New Denver, British Columbia. Guy E. Miller, P. O. Box 300, Joplin, Mis-

souri. Western Federation of Miners Organized May 15, 1893. Affiliated with A. F. of L. 503-511 Denham Building, Denver, Colo. SBT & OAU \$14491.

December 16, 1914.

To the Officers and Members of Local Unions
Western Federation of Miners,

Dear Sirs and Brothers:—

Having noticed in the daily press of Butte City a long and vicious article which purports to be a petition sent from Butte Union No. 1 to other locals of our Federation, this is to officially notify all locals of the Western Federation of Miners that said petition, or whatever it may [420] be called, is not an official act of the Butte Miners' Union No. 1, of the Western Federation of Miners, but emanates from a few men who after having agreed with me in the month of June that it would be for the best interest of No. 1 that they should tender their resignations as officers-elect of the local and having done so in writing, yet in forty-eight hours after I left Butte repudiated said resignations and were installed in office, and, as good and sufficient proof will be furnished, have since that time absolutely refused to co-operate with the representatives of your Federation or to comply with its laws, but have in fact labored apparently with all their might to complete the job undertaken by the mobs of June 13th and 23d, which was to absolutely destroy every vestige of unionism in Butte City, the only difference in the methods being that they have followed the program of looting the treasury while the other

(Testimony of Pat Lee.)

applied direct action and sabotage. When stopped by the constitutional amendment to our law which was taken advantage of by many more than the ten per cent of the membership required petitioning the President of your organization to take charge of the affairs of the local, they absolutely refused to conform to the constitution and have taken this step seeking to divert attention from their infamy by charging Federation officials with attempting to disrupt No. One. This action was taken after your Executive Board Member Guy E. Miller, acting for the Federation [421] in my behalf, had read the petition and notified the union that under the Federation law its affairs were under the control of the Western Federation, they, therefore, being without authority to act officially for the local.

This will be a sufficient guide for our local unions until the next issue of the Miners' Magazine, when every detail of the situation will be placed before the membership by Board member Miller, who is on the ground, as well as Vice-President Mahoney and Board member Lowney. I shall, also, for the benefit of the membership and the public fully review the Butte situation in that issue of our official organ.

Fraternally yours,

[Seal]

CHARLES MOYER,

President Western Federation of Miners.

Waste Basket.

The WITNESS.—I think it was about a week after this action, the filing of the petition, that action was commenced by the Federation to secure control

(Testimony of Pat Lee.)

of the Butte Miners' Union property and affairs. The Butte Miners' Union, a corporation, was conducted as a corporation all of the time immediately after this action and prior thereto. She is a corporation all of the time, The Butte Miners' Union.

[422]

Q. But I mean under the seal of the corporate organization instead of using the other?

A. Yes; we had two seals. They used the corporate seal for legal purposes and Western Federation seal anything we sent out to the Western Federation locals.

Q. I believe you stated about a week after the receipt of Moyer's letter—

A. After the petition was circulated.

Q. About a week after the petition was circulated calling for their recall. Examine this. I offer you this for the purpose of refreshing your memory. Is that the first complaint that was served upon the organization?

A. This is the first one. The filing date of this is December 17, 1914. I know about the arrival of the charter that was sent during the month of October, 1914, and which is marked Defendant's Exhibit 3. The charter has never been accepted by the union.

Q. Was it ever, in your presence, tendered to Mr. Mahoney?

Mr. GEAGAN.—We object to this as irrelevant and immaterial, tendering to Mr. Mahoney not being tendered to the Western Federation.

Which objection was by the Court overruled, to

(Testimony of Pat Lee.)

which ruling the plaintiffs then and there duly asked for [423] and were allowed an exception.

A. Yes, sir.

The WITNESS.—The Western Federation of Miners never made any demand upon the defendant corporation here for per capita tax after the receipt of the letter, Plaintiffs' Exhibit "C," or the letter written to me referring to the charter; they never made any demands at all, and furnished no information and no reports of any kind. I would also like to state that we used to get monthly blanks for the monthly reports, and when I wrote that letter the monthly blanks didn't come for the month of November. We used to get a monthly blank for the written report and when I wrote that the blank didn't come for the month of November, and never after; for the month of November, nor after that.

Cross-examination by Mr. HILTON.

The WITNESS.—I could not exactly say the date when all communications ceased between me and the Western Federation of Miners officials. I have no recollection of receiving anything from the Western Federation of Miners from that date, dated the 16th of December, 1914. I have not got the exact date of the receipt of the last charter. It was in the latter part of October, 1914. As soon as I received that charter, I was aware that it did not conform to the old charter. The last charter was the charter which [424] was tendered by me to Mr. Mahoney. That was not in the month of October, but it might be in December or January. After

(Testimony of Pat Lee.)

the receipt of the charter I immediately was aware that it contained a provision that the original charter did not contain. We still continued to act with the Federation officials after I discovered that fact, because they sent in their blanks and I sent in the report for the month of October. After I determined that there was this error or misapprehension, whatever I might call it, in the issuance of the charter, we were working under the old charter. We wanted a copy of the old charter back again. When we did not receive that we still continued our official relations with the Federation after we discovered that the last charter was all we had, for about a month, or maybe less. During the month of October, and the latter part of that month, we sent into the Western Federation of Miners our usual monthly report, and that purported to give the monthly report of the amount received by us and the disbursements for that month.

Q. And previous to that time, to the 31st day of October, 1914, and during the same month, you had various communications with headquarters at Denver, wrote them and received letters from Mr. Mills, after the receipt of the charter?

A. Mr. Mills wrote one letter to me and after that I received the charter, is all I remember of. [425] I remember of writing him the letter which you have handed me. I did have communication with him and wrote him this letter and inquired concerning one T. Jefferson Davis.

Document received in evidence, marked Plaintiffs' Exhibit "G," and is as follows:

(Testimony of Pat Lee.)

**Plaintiffs' Exhibit "G"—Letter, October 12, 1914,
Secretary-Treasurer to Mills.**

Butte Miners' Union. No. 1, W. F. of M.

In Union There is Strength.

Butte, Montana, Oct. 12th, 1914.

Ernest Mills,

503-511 Denham Bldg.

Denver, Colo.

Dear Sir and Brother:

In reply to yours concerning T. Jefferson Davis, I will ask you not to allow him to join the U. M. W. of A. as this our best show of winning out here. We have them declared unfair & disruptors. If you get any more communications like the one you sent me just answer it and say they are declared unfair.

Fraternally yours,

PAT LEE,

Sec. Tres.

(Butte Miners' Union No. 1.

W. F. of M. Seal.)

The WITNESS.—That bears the seal of the local union. This communication was sent by me to Mr. Mills after I discovered the forfeiture clause in the last charter. At that [426] time nor at any other time I made no objections to the officials concerning the terms of that charter. At a later date I wrote to Mr. Ernest Mills the letter you have now handed me.

Document received in evidence and marked Plaintiffs' Exhibit "H," and is as follows:

(Testimony of Pat Lee.)

**Plaintiffs' Exhibit "H"—Letter, October 14, 1914,
Secretary-Treasurer to Mills.**

Butte Miners' Union No. 1, W. F. of M.

In Union There is Strength.

Butte, Montana, Oct. 14th, 1914.

Ernest Mills,

Denver, Colo.

Dear Sir & Bro.

In the registered letter I sent you I forgot to send the stamps for Bro. Mahoney Card hoping you will excuse me.

Fraternally yours,

PAT LEE,

Sec. Tres.

The WITNESS.—On the same day, October 14, 1914, I forwarded to Mr. Ernest Mills, as secretary of the Western Federation, this document with the seal of the local attached thereto.

Mr. HILTON.—I offer it in evidence. I am offering this, if your Honor please, for the purpose of showing the relations, is all.

Document received in evidence and marked Plaintiffs' Exhibit "I," and is as follows: [427]

(Testimony of Pat Lee.)

**Plaintiffs' Exhibit "I"—Letter, October 14, 1914,
Secretary-Treasurer to Mills.**

Butte Miners' Union No. 1, W. F. of M.

In Union There is Strength.

Butte, Montana, Oct. 14th, 1914.

Ernest Mills,

503-511 Denham Bldg.

Denver, Colo.

Dear Sir & Bro.

I am enclosing you a check for \$100 for the defense fund in aid of our Brothers who are in jail in Michigan hoping you will be successfull in getting them released from prison.

I am also enclosing you two stamps for Bro Mahoney. His account is on Ledger 5, Page 79 hoping you will put the same on his card.

With best wishes,

I remain, Yours truly,

PAT LEE,

[Seal]

Sec. Tres.

(Butte Miners' Union No. 1, W. F. of M.)

The WITNESS.—I wrote that letter after I received the charter, but that money was allowed before the charter was received. During the entire year, 1914, and up to and including 1915, I made no further report after the month of October that I recall.

Q. You made no report on blanks as to any votes taken by you? A. The referendum. [428]

Q. Yes, the referendum. And the membership still continued, did it not? The membership of the

(Testimony of Pat Lee.)

Western Federation of Miners, sending in members, still continued to be members of the local union, did they not? A. Yes, sir.

Q. Did you deal with them in your capacity as an official of the local? Did you deal with them as you always had previous to the acceptance of the charter?

A. We didn't accept the charter. After the charter came we still dealt with the members as before. I signed and stamped Brother Lowney's card, and with the usual stamp and my name, during 1914 and 1915. This is my signature during the year 1915, cancellation of stamp; that is my rubber stamp. This charter of 1914, bearing date of October of that year, was never accepted. By that I mean there never was any motion made at any meeting of the union to accept the charter. There was no motion made at any meeting of the union to reject it that I recall. It was never returned to the Federation; it was never returned to headquarters.

Q. Did you ever write a letter to the Federation saying that you, as an individual even, or that the local organization as an organization, had rejected it by any action?

A. I don't say they did reject it, no.

Q. Did you still keep it? [429]

A. Well, it was laying there in the office all the time. It has been in the possession of the local from that time till this, uninterruptedly, until it was produced in evidence.

(Testimony of Pat Lee.)

Redirect Examination by Mr. BREEN.

The WITNESS.—I recall the letter I wrote to Mr. Mills on November 24th, 1914. In that letter I notified him that the charter was not satisfactory. I stated to Judge Hilton that we continued to work under that charter. We had been working under that charter from the date of its destruction right along. There was a reason why the Butte Miners' Union did not withdraw formally from the Western Federation of Miners prior to the date of withdrawing. I think it was some time in January that we wanted to withdraw, but our local officers advised not withdrawing while the suit was pending.

Q. At that time there was a suit pending against the officers of this defendant organization, asking for the control and management.

Mr. HILTON.—Now, we object to the question, if your Honor please, it is leading and improper.

The COURT.—Sustained.

Q. I want to call your attention to No. A-6590, a case in the District Court of the Second Judicial District of the [430] State of Montana, in and for the County of Silver Bow, the Western Federation of Miners, a voluntary organization and association of persons, with its headquarters in the City and County of Denver, State of Colorado, plaintiffs; versus Martin Seahill et al., defendants, filed in the District Court on December 17th, 1914. Is that the suit you refer to?

A. Well, one similar to that. That was thrown out on a technicality.

(Testimony of Pat Lee.)

This is the original complaint filed. In the suit entitled in the same court and cause, amended complaint, filed February 8th, I think there might be one prior to that, but that is the same suit.

We had taken legal advice as to withdrawing, early in January, and were advised not to until the suit was determined.

(Witness excused.)

Mr. BREEN.—We now, if your Honor please, offer in evidence the seventh affirmative defense to the Bill of Complaint and Complaint of plaintiffs, which is as follows: “That there is no provision in said constitution and by-laws of the above-named Western Federation of Miners, exhibit ‘D,’ of this answer, and no provision exists, or ever existed, authorizing the issuance or empowering any officer or member [431] of the above-named Western Federation of Miners, or the above-named Western Federation of Miners, to issue any charter, or other instrument, containing the following clause, or any part thereof, either in words or in substance, to wit: ‘It is agreed that should the aforesaid union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books and papers, shall become the property of the Western Federation of Miners,’ and said clause was inserted in the said pretended reissuance of said original charter without any authority whatever and contrary to said constitution and by-laws, and is in excess of the power granted by said constitution and by-laws, and

(Testimony of Pat Lee.)

wholly null and void, and is contrary to public policy."

We offer the eighth affirmative defense, which is as follows:

"For an eighth affirmative defense to the bill of complaint and complaint of plaintiff, this answering defendant alleges; That the said pretended reissuance of said charter, set forth in paragraph five of said bill of complaint, and the contract therein attempted to be expressed, namely: 'It is agreed that should the aforesaid union withdraw, or be dissolved, suspended, or forfeit this charter, then all property, moneys, books and papers, shall become the property of the Western Federation of Miners' are each and all illegal and against public policy, and each and all and every portion thereof contravene the express provisions of section [432] 4226, Revised Codes of Montana, of 1907, as amended by Chapter 101 of the Session Laws of 1909, of the Eleventh Legislative Assembly of the State of Montana."

We offer the ninth affirmative defense to the bill of complaint and complaint of plaintiff as follows: "For a ninth affirmative defense to the bill of complaint and complaint of plaintiff, this answering defendant alleges: That the said pretended reissuance of said charter, set forth in paragraph five of said bill of complaint, and the contract therein attempted to be expressed, namely: 'It is agreed that should the aforesaid union withdraw, or be dissolved, suspended, or forfeit this charter, then all property, moneys,

(Testimony of Pat Lee.)

books and papers, shall become the property of the Western Federation of Miners,' are each and all illegal and against public policy, and each and all and every portion thereof contravene the express provisions of Sections 3889 and 3890, of the Revised Codes of the State of Montana of 1907."

The COURT.—The pleadings are all considered before the Court.

Mr. BREEN.—We have no further testimony.
[433]

Testimony of Charles E. Mahoney, for Plaintiffs (in Rebuttal).

CHARLES E. MAHONEY, a witness heretofore on the stand, being recalled by plaintiff in rebuttal, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—I am the same witness who was on the stand yesterday in this case. I was in the courtroom during the giving of testimony by members Lee, Leahy, O'Connor and Oliver, and heard the testimony of those gentlemen with regard to the handing of a charter to me. That is the charter in question here of October date. At that time I informed them that all matters should be sent to the International Office of the Western Federation of Miners. This occurred on North Main street, in Butte, in the office of the Miners' Union at that time. It was never sent to the officers of the Western Federation of Miners. I have been a member of The Butte Miners' Union for several years.

(Testimony of Charles E. Mahoney.)

Q. Did you ever see the original charter of the Butte Miners' Union in the Western Federation of Miners issued in 1893? A. Yes, sir.

Mr. BREEN.—Just a moment. This is reopening the case, and it is not rebuttal. We object to it for that reason.

Which objection was by the Court overruled, to [434] which ruling the defendant then and there duly asked for and was allowed an exception.

Q. Do you know whether or not that charter contained the clause that is in the charter of October, 1914, with relation to the money, books and property of the Butte Union? Calling your attention to Defendant's Exhibit 3, which is the October charter, and the clause therein relating to what should become of the property in the event of withdrawal, suspension, and so forth.

A. The contracts in both charters were identical. The contracts in the two charters are identical, the one previously destroyed in the wrecking of the hall, and this charter here; that is the wording of them.

Cross-examination by Mr. BREEN.

The WITNESS.—I think it was in the early part of 1912, that I became a member of the Butte Miners' Union.

(Witness excused.) [435]

Testimony of Patrick Meaney, for Plaintiffs (in Rebuttal).

PATRICK MEANEY, a witness called on behalf of plaintiffs in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—My name is Patrick Meaney, and I reside in Butte, having resided here thirty-seven years. I became an active member of the Butte Miners' Union, in April, 1895, and contributed towards the first money that was raised to build the present Miners' Union Hall, in 1881. I was employed at the Star West. I was acquainted with the original charter that was issued to the Butte Miners' Union by the Western Federation of Miners, in 1893, and saw it there hanging up on the wall, all the time after, and numerous times after that. I read it. There was a clause in the original charter as originally issued to the Butte Miners' Union providing that in the event of withdrawal or suspension or for the other causes named therein there was to be a change of the ownership of property, or that the property was to become the property of the Western Federation of Miners. In the old charter of the Butte Miners' Union there was a provision that if the charter should be revoked or the union should withdraw or be suspended from the Western Federation of Miners, that the property would revert to the Western Federation of Miners, and that was the general understanding when the Western Federation of Miners was formed. That provision was in the

(Testimony of Patrick Meaney.)

original [436] charter that I saw in the Butte Miners' Union Hall, the one that was issued in 1893.

The main purpose of the formation of the Western Federation of Miners was to relieve the Butte Miners' of putting up money that was draining from them in supporting the Coeur d'Alene strike of 1892, and to get all the unions formed into an organization of miners that would aid the cause. That was one of the things, and in that way it would relieve Butte of the drain. The organization was formed in the Miners' Union Hall, in Butte, in the month of May, 1893. The Butte Miners' Union issued the call for it, and Mr. Breen made the motion appointing a committee of five of the Butte Miners' Union, which constituted Tom Nolan, Charles O'Brien, William McLean and John Gilligan. They communicated with the various miners' unions throughout the west, for the purpose of meeting in Butte sometime in the middle of May, I have forgotten the exact date, for the purpose of forming a western miners' organization or a miners' organization of the West. They had not determined the name of it, until the convention had met. John Gilligan was the first president of the Western Federation of Miners, and William Weeks was the first Secretary.

Cross-examination by Mr. BREEN.

The WITNESS.—I first became a member of the Butte [437] Miners' Union, an active member, in January, 1895, and by "active member" I mean a dues paying member. Prior to that time I had not

(Testimony of Patrick Meaney.)

been recognized as a member of the Butte Miners' Union, but I was president of the Workingmen's Union. I did not attend the meetings of the Butte Miners' Union, and was not a member, and did not pretend to join an organization that I did not consider I was following the vocation of its members, and I should not be admitted as a *bona fide* member like others did. The time I became a member was approximately two years after the organization of the Western Federation of Miners.

I know that you made the motion appointing the committee, because we had the people's headquarters, and it was your object to become the first president of the Western Federation of Miners, but we saw to it, as members of the peoples' party that we had enough men there in the Miners' Union Hall to not allow you even to attend the first convention, and that you were not even elected as a delegate. You tried to be president of everything that came up from a labor standpoint in the state at that time. At that time there was a state association, but it was not an active association or organization. No organization of that kind had any definite purpose. The formation of the Western Federation of Miners was for the purpose of relieving the expenses of the Butte Miners' Union. At that time the Butte Miners' Union [438] had property as also did the Granite Mountain.

After I joined the Butte Miners' Union in 1895 I went to Helena, but not necessarily to run for State Senator. Since that time I have never been a mem-

(Testimony of Patrick Meaney.)

ber of the Butte Miners' Union. I did not go to work at that time in the Original Mine for the period of one day, for the purpose of joining the Butte Miners' Union. At the present time I live in Butte on Ohio Street, and my business is mining, out in Jefferson County. I have some claims out there. I have lived in Butte all winter. Mining is my business.

I went in the Butte Miners' Union Hall and saw the charter the day it was hung up, or the day after; I don't recall the date; it was after it was hung up. I was president of the Workingmen's Union and I was secretary of the Labor Temple, and that occupied three nights out of each week during several years, and I had access to all of the charters, and I read all of them, and made it my business to read them. When this charter was hung up it was framed, and had a glass front. I don't recall any drapery being on it. This charter which was hanging up contained five names, Joe Poynton, Bill Cunningham, but the others I cannot recall. There was John Gilligan, President, and W. J. Weeks, Secretary. Poynton's name was afterwards stricken from the charter. I do not recall John Eddy's name being on that charter, neither do I recall Pat Colm's nor Frank Shovlin. I read that charter [439] after it was hung in the hall. My business took me in there most every day. It is not a fact that I am appearing as a witness in this case because of my feeling against Mr. Breen.

(Witness excused.) [440]

**Testimony of Ernest Mills, for Plaintiffs (in
Rebuttal).**

ERNEST MILLS, a witness called on behalf of plaintiffs in rebuttal, being duly sworn, testified as follows:

Direct Examination, by Mr. GEAGAN.

Q. Is this the book that you produced on the request of Mr. Breen yesterday, with regard to the records of the Federation, the old records?

A. Yes, sir.

Mr. GEAGAN.—We now offer in evidence this book.

Mr. BREEN.—We submit that that would not be any proof. We object to the offer in evidence because that would not be any proof whatever. There is no evidence by whom these entries were made, or anything of the kind. It is objected to as incompetent, irrelevant and immaterial, and not the best evidence. We object to it further because it has not been properly identified.

The COURT.—The objection is overruled. It will be allowed in evidence.

To which ruling of the Court the defendant then and there duly asked for and was allowed an exception.

Which said document is marked Plaintiffs' Exhibit "J" and is as follows: [441]

**Plaintiffs' Exhibit "J"—Minutes of Miners' Unions
of the Northwest, etc.**

Miners' Union Hall,

Butte, Montana, May 15th, 1893.

Pursuant to a call by the committee of arrangements calling a convention of all the miners' unions of the Northwest for the purpose of organizing or forming a Federation Chairman J. L. Williams called the convention to order.

On Motion John McLeod of South Dakota was elected temporary chairman and T. Malouin of Montana, Temporary secretary.

On Motion a Committee of five including the Secretary be appointed on Credentials.

Chair appoints Charles Obrien, Peter McGowan, Stephen Nicholas and Peter Timmons with the Secretary.

On Motion Recess of 20 minutes was taken to give committee time to report.

Report of Committee That the following named Brothers are entitled to seats in the convention:

John McLeod.	D. G. O'Donnell.
Pat McKelvey.	James Leonard.
J. C. Darby.	Patrick Burk.
D. D. Goode.	Jos. Poynton.
Geo. Giles.	Wm. Cunningham.
Wm. Durand.	Pat Galagher.
W. J. Wilson.	Jas. H. Rowe.
Wm. Bell.	Thos. Knotwell.
J. P. Fister.	Andrew Osborn.
J. T. Beale.	Richard Waters.

Stephen Williams.	Stephen Nicholas.
Chas. Actis.	Patrick Clifford.
R. M. Nettle.	Geo. R. Smith.
Archie Gibson.	John L. Williams.
T. J. McLennon.	Thomas McLaughlin.
James Millett.	T. Malouin.
John Duggan.	Chas. Obrien.
John Duggan, Proxy.	Bart Maloy.
Thos. Obrien.	John Gilligan.
Peter McGowan.	W. J. Weeks.
Chas. J. Butler.	Anthony Mathews.
Peter Timmons.	

On Motion Report accepted and placed on file and
Delegates Seated.

On Motion Chair appoints a committee of five on
Rules of Order and permanent organization. [442]

Committee: James Leonard of Colorado.

R. M. Nettle of S. Dakota.

Wm. Cunningham of Butte, Mont.

D. D. Goode of Granite, Mont.

Jos. Payton of Idaho, Mont.

On motion one more member was allowed on the
committee.

Chair appoints John Duggan of Utah.

On motion Committee consisting of one member
from each state represented be appointed.

Committee: G. R. Smith, Idaho.

Stephen Williams, Mont.

Patrick Clifford, Colorado.

Dan. O'Donnell, S. Dakota.

John Duggan, Utah.

On Motion two more be added to the committee.
Chair appoints.

Geo. Giles of Montana.

Thos. O'Brien, Idaho.

On motion Convention adjourns till 2 o'clock P.
M.

T. MALOUIN,
Sec'y.

Transcribed by

W. J. WEEKS,

Sec-Treas.

W. F. M.

Hall of Butte Miners' Union

May 15th

After Noon Session.

Meeting called to order by Chairman, John Mc-
Leod.

Minutes of Morning Session read and approved.

Report of Committee on Rules of order and per-
manent organization read and adopted.

Report of Com. Chairman Convention.

We your committee appointed to draw up rules con-
vention and [443] order of Business recommend
that First in order shall be considered the advisa-
bility of forming a federation second title of organi-
zation, 3d, its component parts, 4th, their right and
duties and adoption of constitution for government
of the organization.

Rules Order The rules of order to govern proceed-
ings of convention to be those of the late ~~state~~ Mon-
tana State Association of Miners, we further recom-

mend that the temporary officers be made permanent for convention.

Jas. Leonard.

Wm. Cunningham,

R. M. Nettle,

J. F. Poynton,

John Duggan,

D. D. Goode.

On Motion it was unanimously decided to form a Federation.

On Motion No member is allowed to speak more than once on any question and for not more than five minutes at a time.

On Motion a committee consisting of one member
Union

from each ~~State~~ represented be appointed to select a name for the Federation.

On Motion a recess of 10 minutes taken to give Committee time to report.

AFTER RECESS.

Report Com. Committee Report having selected the name of Western Federation of Miners.

Report Adopted.

On Motion The Western Federation of Miners is composed of Unions represented in this Convention.

On Motion a committee of one member from each Union represented in this body be appointed to Draft a constitution and by-Laws.

Committee: Patrick Clifford, Aspen, Colo.

Jas. H. Rowe, Butte, Mont.

W. J. Wilson, Burke, Idaho.

J. P. Fister, Belt Mount., Mont.

Archie Gibson, Bannock, Mont.

Chas. J. Butler, Barker, Mont.

R. M. Nettle, Central City, S. Dak.

Jas. Leonard, Creede, Col.

John Duggan, Eureka, Utah.

James Millett, Granite, Mont.

Dan Odonnell, Lead City, S. Dak.

Jos. Poynton, Mullan, Idaho.

Wm. Bell, Ouray, Colo.

Peter Timmons, Rico, Colo.

Patrick Burke, Gem, Idaho. [444]

On Motion Adjourned till 2 o'Clock Tuesday, May 16th, and that the committee Report at that time.

T. MALOUIN,

Sec'y.

Transcribed by

W. J. WEEKS,

Sec'y-Treas.

W. F. M.

Hall of Western Federation of Miners.

May 16, 1893.

Convention called to order at 2 o'clock, P. M.

Chairman John McLeod in the chair.

President J. L. Williams of the Butte Union gave Notice that he had appointed W. A. Shifflebin as Delegate in place of Chas. Actis, who had failed to act.

On Motion Bro. Shifflebin was seated.

Minutes of Previous Meeting read and approved.

On Motion a Committee consisting of one delegate from each State was appointed on Press and Printing.

P. S. Cannot find the names of that committee.

W. J. WEEKS,

Sec'y.

W. F. M.

On Motion Committee on Constitution Makes their report.

On Motion Constitution be acted on section by Section.

On Motion Preamble adopted as read.

PREAMBLE.

Since there is scarcely any fact better known than that civilization has for centuries progressed in proportion to the production and utilization of the metals, precious and base, and most of the comforts enjoyed by the great majority of mankind are due to this progress, the men engaged in the hazardous and unhealthy occupation of mining should receive a fair compensation, for their labor, and such protection from the law as will remove needless risk to life and health; we therefore, deem [445] it necessary to organize the Western Federation of Miners of America for the purpose of securing by education and organization and wise legislation a just compensation for our labor and the right to use our earnings free from dictation by any persons whatsoever. We therefore declare our objects to be :

First. To secure an earning fully compatible with the dangers of our employment.

Second. To establish as speedily as possible and forever our right to receive pay for labor performed in lawful money, and to rid ourselves of the iniquitous system of spending our earnings where and how our employers or their officers may designate.

Third. To procure the introduction and use of any and all suitable, efficient appliances for the preservation of life, health and limbs of all employees, and thereby preserve to society the lives of large numbers of wealth producers annually.

Fourth. To labor for the enactment of suitable mining laws, with a sufficient number of inspectors, who shall be practical miners for the proper enforcement of such laws.

Fifth. To provide for the education of our children by lawfully prohibiting their employment until they shall have obtained a satisfactory education, and in every case until they shall have reached sixteen years of age.

Sixth. To prevent by law any mine owner or mining company from employing any Pinkerton detectives or other armed forces from taking possession of any mine, except the lawfully elected or appointed forces of the state, who shall be *bona fide* citizens of the county and state.

Seventh. To use all honorable means to maintain friendly relations between ourselves and our employers, and endeavor by arbitration and conciliation to settle such differences as may arise between us, and thus make strikes unnecessary.

Eighth. To use all lawful and honorable means to abolish the system of contract convict labor in states where it now exists and to [446] demand the enforcement of the foreign contract labor law and protection of our American miners and mechanics against imported pauper labor.

Ninth. To demand the repeal of all conspiracy laws that in any way abridge the rights of labor organizations.

Tenth. To procure employment for our members in preference to non-union men.

On Motion Any Delegate who is called to order by the chair and refuses to obey will be ejected from the hall.

The Following constitution was then adopted Section by Section.

CONSTITUTION.

Article I.

Section 1. This body shall be known as the Western Federation of Miners, and shall be composed of Miners' Unions of the West, duly paying a per capita tax to this Federation.

Section 2. The object of this Federation is to unite the various Miners' Unions of the West into one central body; to practice those virtues that adorn society and remind man of his duty to his fellow-man; the elevation of his position and the maintenance of the rights of the miner.

Article II.

Representation.

Section 1. This Federation shall hold its annual convention on the second Monday in May at such

place as the convention shall designate before adjournment of any session thereof.

Section 2. Each local union shall be entitled to one delegate for one hundred members or less, and one for each additional one hundred or majority fraction thereof, but no delegate shall have more than five votes.

Section 3. No local union shall be entitled to representation [447] in the annual convention which has not complied with the constitution of this Federation.

Section 4. Delegates to the annual convention shall be elected by their respective local unions at least thirty days prior to the meeting thereof, and shall present their credentials before being admitted to a seat therein.

Section 5. A majority of the unions comprising this Federation shall constitute a quorum.

Article III.

Section 1. The officers of this Federation shall consist of a president, two vice-presidents, a Secretary-treasurer, warden and an executive committee of five of which the president shall be chairman, all of whom shall be elected by a plurality of the votes cast at each annual convention.

Election of Officers.

Section 2. Nominations of officers of this Federation shall be from the floor, but election shall be by ballot. Should no candidate receive a plurality of the votes cast, the candidate receiving the lowest number of votes shall be dropped and another ballot

taken, and this procedure shall be continued until an election shall be had.

Duties of President.

Section 3. It shall be the duty of the president to preside at all meetings of the Federation, preserve order, enforce the constitution and watch vigilantly over the interests and affairs of the Federation. In this he shall be assisted by all the officers of the Federation. He shall decide all questions of order, subject to an appeal to the convention. He shall have the right to vote at the election of officers, and when the members are equally divided he shall have the deciding vote on any question. He shall sign all orders drawn by the secretary-treasurer in compliance with a vote of the majority at any convention, or the executive committee. He shall take no part in any debate [448] while in the chair, but may call the vice-president or any qualified member to the chair when he wishes to discuss any question.

Duties of Vice-presidents.

Section 4. It shall be the duty of the first vice-president to assist the president to preserve order at all meetings and assist him in the discharge of all his duties, preside during his absence and perform then all the duties devolving upon the president. The second vice-president shall, in the absence of the president and the first vice-president, preside and perform all the duties of the president.

Duties of the Secretary-treasurer.

Section 5. The Secretary-treasurer shall have charge of and preserve the seal and all books, docu-

ments and effects of the general office of the Federation; shall record the proceedings of all conventions and of the meetings of the Executive Committee, and shall keep copies of important letters sent out by him; shall receive and receipt for all moneys, pay all current expenses, prepare and submit in circular form to the locals a quarterly report of all moneys received and disbursed by him, give a bond in such amount as the Executive Committee may from time to time demand, but shall not at any time have more than \$1,000 subject to his order. All other funds must be deposited by him as directed by the Executive Committee. He shall for his services receive such compensation as the convention may determine and shall at all times have his books ready for examination by the Executive Committee. All property of the Federation in his possession he shall turn over to his qualified successor.

Duties of the Warden.

Section 6. It shall be the duty of the warden to take charge of the doors within which the convention shall be held, and see that none but qualified delegates enter, and that none retire without permission of the president. [449]

Duties of Executive Committee.

Section 7. The Executive Committee shall constitute that Federation Board of Arbitration and Conciliation and between conventions shall have power to direct the workings of the Federation. The Executive Committee shall be convened by the president, or by the secretary-treasurer, at the request of three members of said committee.

Article IV.

Revenue and Disbursement.

Section 1. The revenue of this Federation shall be derived from a charter fee at cost of production and an annual per capita tax of one dollar per member in good standing, to be paid from the general fund of each local union in advance quarterly, and, in case of emergency, such assessments as in the judgment of the Executive Committee may be necessary.

Defense Fund.

Section 2. It shall be unlawful for any local union to enter upon a strike unless when ordered by three-fourths of its resident members and on approval of the Executive Board, who shall have at least thirty days' notice of the action of the local union; PROVIDED, That when employers refuse to give thirty days' notice, or thirty days' time to consider the proposed change in wages or working time made by them to the local union, then it shall be lawful for such local union to strike in order to maintain their position, and they shall be entitled to receive all the assistance which approved by the Executive Board would entitle them to.

Article V.

Organizers.

Section 1. The president, with the approval of the Executive Committee, may appoint organizers in any state or territory who [450] shall diligently labor to organize all non-union miners and report all work done by him regularly to the secretary-treasurer. Organizers shall receive for their

services three dollars per day and expenses for time actually spent in the discharge of their duties. The local union organized shall pay the organizer, but failing to organize with a membership of at least fifteen, the Executive Committee shall pay the amount earned.

Section 2. This constitution shall not be amended except by a two-thirds vote of all delegates assembled in annual convention.

Section 3. Any local union failing or refusing to comply with this constitution shall for the first offense be suspended from the privileges and benefits of the Federation for three months, and for a second offense six months or be expelled, as the Executive Committee may determine.

Section 4. Each member at initiation shall pledge himself to support the constitution of this Federation and obey all lawful orders of the Executive Committee, in addition to the obligation required by the local union of which he becomes a member.

During the reading a dispatch arrived to Bro. Duggan of Utah that the Mining Co.'s had conceded the Miners their old wages but would deduct 25 *cts* per day from the mine laborers wages.

On Motion it is the sense of the Western Federation of Miners that the Miners of Utah should stand by the mine laborers against all encroachments of their rights.

On Motion a dispatch to that effect was sent signed by the Chairman and Secy and countersigned by Bro. John Duggan.

On Motion The Charter Fee was made the actual cost of Production.

On Motion The adoption of the constitution as a whole was deferred till nearer the close of the session.
[451]

The chair appoints the following Bros. as Committee on Printing and Press:

John L. Williams, of Butte, Mont.

J. T. Beale ———, Colo.

Patrick Burk, Gem, Idaho.

John Duggan, Eureka, Utah.

Stephen Nicholas, Central City, S. Dak.

On Motion Nothing is to be given to the Press during the session of this convention.

An invitation from the Bystander was accepted to visit their office to-morrow at noon.

On Motion adjourned till 9 o'clock A. M. to-morrow.

T. MALOUIN,
Sec'y.

Transcribed by
W. J. WEEKS,
Sec'y-Treas.

W. F. M. [452]

Hall of Western Federation of Miners,
May 17, 1893.

Meeting called to order by Chairman John McLeod.

On Motion we proceeded to the regular order of Business.

On Motion Secretary of committee on constitution read By laws Section by section.

On Motion This matter be referred to committee on constitution.

On Motion a recess of 15 minutes was taken.

On Motion committee on constitution appointed committee on By Laws.

Sec'y of com. instructed to read By laws.

On Motion we proceed to adopt By laws section by Section. The following by laws were then adopted During the reading of which a Sec'y of com. was substituted by Motion to allow Bro Duggan to telegraph to his union.

BY-LAWS.

Article 1.

Section 1. Whenever a strike shall be approved by the Executive Committee or a local union as authorized by Section 2, Article IV., of the constitution, such local union shall designate the person or committee to whom aid shall be sent by the secretary-treasurer, and such person or committee shall be held responsible for the proper use of such aid and make complete returns to the Executive Committee and the local union of the receipts and disbursements and the persons aided.

Section 2. The secretary-treasurer shall make all remittances by draft in favor of the person or committee authorized by the local union to receive aid, and take sealed receipt for the same.

Section 3. The Executive Committee shall send to each local union which has paid per capita tax, a quarterly password, and [453] on the first of January and July, a semi-annual password to be given to any member in good standing who may desire to travel.

Section 4. All withdrawal, transfer and traveling cards of this Federation shall be made of uniform design.

Section 5. The Western Federation of Miners has adopted, for the sake of uniformity, the following supplies which must be procured from the secretary-treasurer, viz.: constitutions, traveling cards, transfer cards, quarterly report blanks and the authorized metal badges of the Federation at cost.

Section 6. On presentation of a traveling card to any union, the holder shall be entitled to the same benefits, financial and otherwise, to which he would be if in his local union, and shall be aided in procuring employment when desired; PROVIDED, That all money paid to any member under this section shall be repaid by the local union to which the member then belongs.

Section 7. Whenever two or more union men may be employed, not in the vicinity of a local union, one of them shall act as collector and forward to their respective unions monthly all dues and assessments for which they may be liable.

Section 8. No member shall be admitted to a seat in a local union or any convention while under the influence of liquor and any member refusing to obey the order of the president in either case shall be fined one dollar for each offense.

Section 9. Each local union may provide for the education of its members by establishing and maintaining a library for the use of its members, and the use of such newspapers as are deemed best calculated to promote the interests of the mining community.

On Motion a recess of 30 minutes was taken.

On Motion The constitution and By laws was adopted as a whole.

On Motion the Section following was adopted as a section to the By laws. [454]

Districts.

Section 10. Where two or more local unions exist, they may, if they deem it necessary, organize a District Union, for the purpose of doing business jointly for the District, the local unions to elect delegates to the District Union. But District Unions shall be subordinate to the Federation.

On Motion The Press Committee was instructed to have 100 copies of the constitution and By Laws printed at once.

On motion a committee of 5 was appointed on charter and Ritual.

Com: Bart Maloy, Butte, Mont.

J. T. McLennon, Granite, Mont.

Stephen Nicholas, S. Dak.

Wm. Cunningham, Butte, Mont.

Jos. Poynton, Mullan, Idaho.

AFTERNOON.

On Motion the resignation W. A. Shiflebin was accepted.

On Motion the President of The Butte Union is allowed to cast the vote of the absent members of his Delegation.

On Motion Adjourned till 10 o'clock to-morrow.

T. MALOUIN,

Sec'y.

Transcribed by

W. J. WEEKS,

Sec'y Treas.

W. F. M.

Hall Western Federation of Miners.

May 13, 1893.

Convention was called to order by Chairman John McLeod. Minutes of Previous were read and approved as corrected.

Committee on Charter and Uniform Ritual asked further time to report.

Report of committee on rules of order and order of Business [455] adopted as read. The following is their report:

Order of Business.

1. Call the meeting to order.
2. Warden, secure the door.
3. Presentation of credentials.
4. Roll call.
5. Reading minutes of previous meeting.
6. Communications and correspondence.
7. Bills.
8. Report of officers.
9. Report of Standing Committees.
10. Report of Special Committees.
11. New Business.
12. Unfinished Business.
13. Election of officers.
14. Good and Welfare of the Federation.
15. Installation of officers.
16. Adjournment.

Rules of Order.

During the continuance of the meeting silence must be observed, the officers and members retaining their respective seats, and no one leaving the room without permission of the President or Vice-president.

No member shall, by conversation or otherwise, interrupt the business of the Association, or refuse to obey the chair.

The President, while presiding, will state every question coming before the Association, and immediately before putting it to a vote shall ask: "Are you ready for the question?" Should no member rise to speak, or by silence indicate their readiness, he shall rise to take the question, and after he has risen, no member shall be permitted to speak upon it. He shall pronounce the result or decision of the Association upon all subjects.

Every member, when he speaks or offers a motion, shall rise and respectfully address the presiding officer. While speaking he shall confine himself to the question under debate, avoiding all personality and indecorous language, as well as any reflection upon the union or its members.

Should two or more members rise to speak at the same time, the [456] Chair shall decide who is entitled to the floor.

No member shall disturb another in his speech, unless to call him to order for words spoken.

If a member, while speaking, shall be called to order at the request of the chair, he shall cease

speaking and take his seat until the question of order is determined, when, if permitted, he may again proceed.

No member shall speak more than once on the same question, until all the members wishing to speak shall have had an opportunity to do so, nor more than twice without permission of the Chair.

When any communication, petition, or memorial is presented, before it is read, a brief statement of its contents shall be made by the introducer to the Chair.

No motion shall be subject to action unless seconded and stated by the Chair.

Any member may call for a division of a question when the sense will admit of it.

When a question is before the Association, no motion shall be received unless to close the previous question, to lay on the table, to postpone indefinitely, to refer, to amend, and shall have precedence in the order herein arranged—the first three of which shall be decided without debate.

After any question, except one of indefinite postponement, or one the result of which the Association cannot reverse, has been decided, any two members who vote in the majority may, at the same meeting, move for a reconsideration thereof.

No amendments shall be received except they be in writing.

All questions not provided for by the Constitution, By-laws, Rules of Order, or by the general laws of the Association, shall be determined by a ma-

jority of the members at a regular meeting.

These rules may be suspended for a special purpose by a vote of [457] two-thirds of the members present.

Cushing's Manual shall guide the proceedings of this Association in the absence of any Rules of Order not herein provided for.

Invitations from the Citizens of Anaconda to the Delegates of this convention to visit them was accepted and Bro. Poynton instructed to make a date.

On Motion adjourned till 2 o'clock P. M.

T. MALOUIN,

Secy.

Transcribed by

W. J. WEEKS,

Sec'y Treas.

W. F. M.

Afternoon.

Hall Western Federation of Miners.

May 18, 1893.

Convention called to order by Chairman John McLeod.

Minutes of morning session read and approved.

Com. on press report that the printed copies of the constitution will probably be ready to-day.

Committee on charter Reported form of Charter and report adopted as amended.

On Motion Design of seal referred to committee on Charter.

Report of committee on Ritual adopted as amended.

Committee on resolutions Report Progress and ask further time.

On Motion Convention goes into committee of the whole to consider the salary of the Sec'y Treas.

On Motion the Sec'y Treas. shall receive Fifty Dollars per month.

On Motion Committee of the Whole Rise.

On Motion Report of Committee was adopted that the Sec'y [458] Treas. receive \$50.00, Fifty Dollars per month.

On Motion communication of Trades and labor Federation was read and filed for future reference.

On Motion adjourned till 9 o'clock A. M. to-morrow.

THOS. MALOUIN,

Secy.

Transcribed by

W. J. WEEKS,

Sec'y Treas.

W. F. M.

Hall Western Federation of Miners.

May 19, 1893.

Convention called to order by Chairman John McLeod at 10:12 A. M.

Sec'y T. Malouin absent.

On Motion W. J. Weeks was appointed Sec'y pro tem.

On Motion Roll call was dispensed with and Pass word taken up.

On Motion Minutes of previous meeting were dispensed with for the present.

On Motion Additional report of committee on charter and Ritual was adopted as read.

On Motion additional clause to the constitution as follows: Here the President shall with the approval of the Executive Committee, fill all vacancies occurring in the Executive Committee or in the office of Secretary-treasurer.

On Motion the Press Com. were instructed to take the added section to the printer.

On Motion a recess of 15 minutes was taken.

On Motion Nomination for President of Federation were declared in order. John Gilligan was placed in nomination, also John L. Williams. [459]

On Motion Nominations were closed.

By Consent the chair appointed 3 tellers, viz.: Fister of Belt Mountain, Timmons of Colorado, and Poynton of Idaho.

On Motion Ballot was by Roll call, each Delegate to cast the number of votes he is entitled to and that he deposit each vote separately.

Number of votes cast 56, of which John Gilligan 35 and J. S. Williams 21. John Gilligan having received a majority of all the votes cast was declared duly elected.

On Motion Election is made unanimous.

Nomination for 1st Vice President was Declared in order. D. D. Goode of Granite was nominated.

On Motion Sec'y was instructed to cast the vote of the convention for Bro. Goode.

Nominations for 2d Vice President were declared in order. John Duggan of Utah was nominated.

On Motion Nominations were closed and Sec'y instructed to cast the vote of the convention for Bro. Duggan.

Nominations for Sec'y Treas. were declared in order. W. J. Weeks was placed in nomination and also T. Malouin.

Moved that Nominations close and we proceed to Ballot. W. J. Weeks received 26 Votes and T. Malouin 30 Votes. Bro. Malouin was declared duly elected.

On Motion Election was made unanimous.

On Motion a Committee of five, viz.: Bros. Goode, Burke, Beal, O'Donnell and J. L. Williams were appointed ~~a com~~ on Ways and Means.

On Motion Adjourned till 2 o'clock P. M.

W. J. WEEKS,
Sec'y Pro. Tem.

Trans. by

W. J. WEEKS,
Sec'y Treas.

W.F.M. [460]

AFTERNOON.

Hall Western Federation of Miners.

Butte, May 19, 1893.

Meeting called to Order by Chairman John McLeod.

Minutes of yesterday's sessions were read and approved.

On Motion This body attend the funeral of Bro. McHugh and return to the hall after the funeral.

On Motion adjourned till after the funeral.

Meeting called to order at 2:45 P. M.

Minutes of Morning session read and approved.

Nominations for Warden Declared in order.

Wm. Cunningham Placed in nomination.

On Motion Sec'y was instructed to cast vote of convention for Bro. Cunningham.

Nominations for members of the Executive Committee declared in order. John McLeod, James Millett, Anthony Mathews and Patrick Galagher were nominated and Nominations declared closed.

On Balloting John McLeod, James Millett, Anthony Mathews and Pat Galagher, having received the highest number of Votes were declared duly elected.

On Motion The convention took up the report of the committees.

On Motion Report of Ways and Means Com. adopted and Com. discharged.

On Motion Committee on Resolutions adjourn for 10 Minutes to correct errors.

On Motion the Sec'y instructed to insert the names of Archie Gibson and Thos. Knotwell in the Constitution.

On Motion the report of the Ways and Means Com. is inserted in the By-laws.

The report of the ways and means committee is as follows:

Salaries of Delegates.

Section 11. The salary of Delegates attending Conventions [461] of the Western Federation of Miners shall be \$5 per day, while being employed on the aforesaid occasions, and all stage and railroad

expenses, except resident delegates, who shall receive the prevailing wages of their Local Union. The said salaries and transportation expenses of delegates in attendance at this first Convention to be paid by the Local Union which the delegate or delegates represent. The salaries and stage and railroad expenses of delegates attending all future Conventions shall be paid from the treasury of the Western Federation of Miners.

On Motion the Constitution was signed by all the different Delegates and that the report of the ways and Means Committee ~~be added to~~ Be referred to the committee on Printing and they be instructed to place the same in the hands of the printer to be published at once in book form.

On Motion The ~~report of~~ constitution, By laws, Report of Ways and Means Committee adopted as read.

On Motion Report of committee on Resolutions adopted as amended, which is:

WHEREAS, The Butte City Miners' Union having issued a call for delegates from all miners' unions of the West to be held in Butte, May 15, 1893, for the purpose of forming a federation of the whole for their general protection and the advancement of their interests, and

WHEREAS, By corrupt legislation silver has been deprived of its rightful value as a money metal; and,

WHEREAS, Untold loss, misery and crime have resulted from such deprivation to the business interests and the working people of our country; and

WHEREAS, Imported pauper labor has largely increased the distress of the working people by overcrowding the labor market; and,

WHEREAS, As a further means of oppression Pinkerton and other so called detective armed forces have been used by corporations and other employers; therefore be it [462]

RESOLVED, That the delegates of the various miners' unions in convention assembled, approve the call made by the Butte Miners' Union and pledge themselves to support the Western Federation of Miners organized by this convention and call upon all miners to join with us for general protection.

RESOLVED, That we condemn the damnable action of the gold bugs of Wall Street and their confederates in reducing silver to a commodity, thereby destroying the chief industries of our silver states and robbing the people of their lawful money.

RESOLVED, That we demand that the Congress of the United States re-open the mints of our country to the free and unlimited coinage of both silver and gold on equal terms at the present ratio of 16 to 1, and that the government use the coins of both metals without discrimination.

RESOLVED, That we are unalterably opposed to the repeal of what is known as the Sherman silver purchase act until it is replaced by a law providing for such free and unlimited coinage.

RESOLVED, That we pledge ourselves to aid in every movement to bring about this result and thereby give to labor its just reward and to property its full value.

RESOLVED, That we demand the repeal of all conspiracy and anti-boycott laws and the enactment of laws prohibiting the employment of any but the elected or appointed officers of any city, county and state, who shall be *bona fide* citizens of such city, county and state, for the protection of persons and property in all cases of strikes or lockouts that may result from a disagreement between employers and employees.

RESOLVED, That we are opposed to states maintaining militia companies and request working men not to join such organizations and endeavor to secure legislation that will abolish this great evil.

RESOLVED, That we demand that legislation be enacted by the mining states on behalf of the miners and the election of competent, practical miners as mine inspectors and the employment of licensed stationary engineers. [463]

RESOLVED, That we demand of the government the restoration to the people of all mineral and other lands unlawfully held by railroad and other corporations.

RESOLVED, That we demand the purchase and use by the government of all railroad and telegraph lines in the interest of the people and the establishment of postal savings banks.

RESOLVED, That we condemn as unworthy of a free people the Russian extradition treaty as being calculated to retard the growth of republican principles among people living under despotic and monarchial governments.

RESOLVED, That we heartily approve of the decision of the Supreme Court of the United States on the Geary law and demand its vigorous enforcement.

RESOLVED, That we demand the enforcement of the present immigration and foreign contract labor law and the enactment of more strenuous ones, and request our representatives in Congress to work and vote for legislation tending to this end.

RESOLVED, That we demand the election of the United States senators by the direct vote of the people.

RESOLVED, That we are in favor of the construction of the Nicaragua canal by this government if owned and controlled solely by the United States Government.

RESOLVED, We are unanimously in favor of eight hours constituting a day's work and we demand that an eight-hour law be enacted by our legislators.

RESOLVED, That we, the visiting delegates in convention assembled, tender our sincere thanks to the Butte Miners' Union and Butte Bystanders for courtesies and hospitalities extended while in Butte City.

G. R. SMITH,

Chairman.

JOHN DUGGAN,

G. H. GILES,

D. J. O'DONNELL,

STEPHEN WILLIAMS.

TOM O'BRIEN.

P. H. CLIFFORD. [464]

On Motion all unfinished Business of the Federation is Executive Com.

On Motion the next Meeting of Federation be held in Salt Lake.

On Motion President John Gilligan was duly obligated and installed to the office of President.

On Motion President John Gilligan installed the officers elect of the Federation.

On Motion the following resolution was adopted.

Resolved that whenever the Executive Committee of this Federation shall lose any time in attending to their duties on said committee they shall have \$3.50 per day for such lost time.

On Motion The Press committee is instructed to give all the proceedings of this convention to the Press with the exception of the secret work.

On Motion Adjourned till 8.30 this P. M.

T. MALOUIN,

Sec'y.

Trans by

W. J. WEEKS,

Sec'y Treas.

W.F.M.

Hall of Western Federation of Miners.

May 19, 1893.

EVENING SESSION.

Convention called to order by President John Gilligan.

Chair appoints W. J. Weeks, Sec'y Pro. Tem.

The Chair made some remarks in regard to sending a Delegate to a labor convention to be held in Chicago, on June 5th he was followed by Bros. Clif-

ford Cunningham, Thomas Obrien and Duggan.

Remarks by Bros. Leonard and Clifford, wishing a report of the Press Committee.

Remarks by Bro. Cunningham, relating to correspondents in mining [465] localities ~~on~~ where labor papers and those friendly to labor are printed with a view to getting the labor ~~of the~~ side of the question before the public.

Bro. Thos. Obrien asked that we assist in getting a congressional investigation ~~be had~~ of the late troubles in the Coeur DAlene.

Remarks by Bros. McLeod Clifford and Timmons on the same subject.

Bro. Timmons spoke on the contract labor Curse The Land question Monopoly and the benefits of Unionism.

On Motion the following Resolution offered by Bro. Clifford was adopted.

Resolved that the first official act of the Western Federation of Miners be the writing a letter to the labor ~~Bearr~~ Bureau of both houses of congress demanding an investigation of the late troubles in the Coeur D Alenes and that a copy be kept for all time by the executive committee of this Federation and that each local union receive a copy of the same.

On Motion the Press committee were discharged and the unfinished part of their work turned over to the Executive Com.

On Motion Convention adjourned Sine Die at 10:27 P. M.

W. J. WEEKS,
Secy Pro. Tem.

Trans. by

W. J. WEEKS,

Sec'y Treas.

W.F.H. [466]

Office of Western Federation of Miners.

May 20, 1893.

Meeting by Executive Committee Called to order by
President John Gilligan.

Resolved that permission be asked of the Butte
Miners Union for use of office room.

Secy. Treas. instructed to get a Seal and all Sta-
tionery necessary.

Secy. Treas. instructed to get 100 Charters printed.

May 15th Date of Organization.

Sec'y. Treas. to get up a cipher.

“ “ Bonds to be fixed at Three Thousand
Dollars.

THOS. MALOUIN,

Secy.

Trans. by

W. J. WEEKS,

Sec'y Treas.

W.F.M.

Per order of Executive committee was instructed
to cancel assement of Eureka Miners Union and ad-
vance their charter on application.

P. S. per capita tax for current quarter.

W. J. WEEKS,

Sec. Treas.

Office Western Federation of Miners.

June 3d.

Meeting of Majority of Executive Committee.

Meeting called to order by President John Gilligan for the purpose of considering the resignation of Thos. Malouin as Sec'y. Treas. of Federation.

Resignation accepted and W. J. Weeks appointed in his place subject to the approval of Executive Com.

Appointment approved by Anthony Mathews and Pat Galagher.

On Motion letter announcing the appointment of W. J. Weeks [467] forwarded to James Millett of Granite for his approval or disapproval.

ANTHONY MATHEWS,

Secy. Pro. Tem.

Trans. by

W. J. WEEKS,

Sec'y Treas.

W.F.M.

Office Western Federation of Miners.

June 6, 1893.

Meeting Majority of Executive Com. Pres. John Gilligan in Chair; W. J. Weeks was installed in the office of Secretary Treasurer of the Western Federation of Miners; Vice Thos. Malouin resigned; Bro. Weeks Bond was fixed at Three Thousand Dollars, his appointment having been approved by Bro. Jos. Millett of Granite and the President announced that he would forward the letter ~~with the~~ announcing the

appointed to Bro. John McLeod of Terrys Peak S. Dakota.

WM. CUNNINGHAM,
Sec'y. Pro. Tem.

Trans. by
W. J. WEEKS,
Sec'y Treas.
W.F.M.

Office Western Federation of Miners.

June 7th.

Meeting of Executive Board.

Pres. John Gilligan in Chair.

Bond of W. J. Weeks as Sec'y Treas. ~~see~~ with A. F. Bray and ~~Phil~~ Phil J. Harrington as Sureties accepted by Pat. Galagher, Anthony Mathews and Pres. John Gilligan.

On Motion Secy. Treas. instructed to forward \$200.00; Two Hundred Dollars to Bro. John Duggan for relief of the Striking Miners of Utah.

W. J. WEEKS,
Secretary.

On Motion Action of Granite Miners Union in forwarding per Capita Tax amounting to Two Hundred Dollars is approved.

W. J. WEEKS,
Sec'y. [468]

Office of the
WESTERN FEDERATION OF MINERS.

Butte, City, Montana, June 10, 1893.

To the Honorable Chairman of the Committee on
Education and Labor, U. S. Senate:

Dear Sir: Under the above heading we beg leave to

inform you that in the convention which organized said Federation the following resolution was unanimously adopted:

RESOLVED, That the first official act of the Western Federation of Miners, shall be the writing of alletter to the Labor Bureau of both houses of Congress demanding a Congressional investigation of the labor troubles in the Coeur D'Alenes, Idaho, last summer, and that a copy be kept for all time by the Executive Board of this Federation, and that each local union receive a copy of the same. It is a well known fact that a very deplorable state of affairs existed in Northern Idaho at that time. The United States troops were called in there by the State authorities, as we believe, without cause. Men were arrested and thrown into the most loathsome prisons and confined from two weeks, to two months, to the great injury of their health, and discharged without even the form of a trial; armed men were imported into the State in direct violation of the Constitution of the State, and it is our firm conviction that a collusion existed to the extent of a conspiracy between the Executive Department of the State of Idaho, and the so-called Mine Owners Association of the Coeur D'Alenes, and that through said conspiracy citizens of the commonwealth of Idaho were wantonly murdered and others falsely imprisoned, and that by misrepresentation of facts the United States militia were made (innocent) abettors.

Hoping you will give this your early and earnest attention, we have, as the representatives of the

Western Federation of Miners, this 9th day of June,
subscribed to the above.

Signed

JOHN GILLIGAN,
President. (Seal)
W. J. WEEKS,
Sec.-Treas. [469]
June 16, 1893.

After consulting with members of the Executive Board it is decided in order to cover cost of mailing etc. put the price of suplies as follows:

Charters, \$2.00; Transfer Traveling and Withdrawal cards at \$.75 per Hundred Constitutions @ .04 each.

The following numbers were given to the uninions of this Federation.

Butte	No. 1
Lead City	No. 2
Central City	No. 3
Granite	" 4
Terrys Peak	" 5
Aspen	" 6
Belt Mountain	" 7
Barker	" 8
Mullan	" 9
Burke	" 10
Gem	" 11
Eureka	" 12
Rico	" 13
Creede	" 14 did not apply.
Curay	" 15
Bannock	" 16 did not apply.
Mamoth	" 17 " " "

June 29, 1893.

Executive Board called to order by President John Gilligan.

On Motion it is decided to send Eureka Miners Union Two hundred dollars to assist them in their strike and to inform them that while the Executive Committee did not have funds at their disposal at present Bro. John Duggan was authorized to procure counsel for the defense of the indicted Miners ~~who~~ ~~were~~ of his union and that the Ex Board would raise the money necessary some way.

W. J. WEEKS,

Sec. Treas.

Aug. 10th, 1893.

Executive Board called to order By President John Gilligan.

On Motion the Sec'y Treas. was instructed to write to J. H. Leyson and authorize him to secure copyright of the official Metallic Button of the Federation subject to the order of the Federation.

W. J. WEEKS,

Sec. Treas. [470]

August 26, 1893.

Office W.F.M.

Meeting of Executive Board called to order by President John Gilligan.

Report of Pat Gallagher on trip to Sand Creek received and accepted. Secretary-Treasurer reads his report.

Meeting adjourns subject to call of the chair.

W. J. WEEKS,

Sec. Treas.

August 31st, 1893.

Executive Board called to order by President John Gilligan.

Present James Millett, Anthony Mathews, and Patrick Gallagher.

President Gilligan states that the object of calling the meeting to consider the dispatch sent us by Bro. Poynton of the central union to the Coeur D'Alene which reads as follows:

One Mine agrees with central union to pay three and one-half all round when lead one hundred pounds and silver one ounce sell at four twenty-five if we now resume work at three Dollars all round wire advice.

On Motion the following dispatch be sent the Secretary of the Coeur D'Alene Central Union.

Executive Board says use your judgment advise holding out letter mailed.

The Secretary-Treasurer was then instructed to write a letter setting forth the sentiments of the Board when the meeting adjourned.

W. J. WEEKS,
Sec. Treas.

Sept. 18, 1893.

Office W.F.M.

Meeting local Executive Board. [471]

Meeting called to order by Pres. John Gilligan.

Present: Gallagher, Mathews and Sec. Treas.

On Motion a check for Five Hundred Dollars is drawn in favor of Anthony Mathews the amount to be turned over by him to J. F. Poynton for the use of the Coeur D'Alene strikers.

Meeting adjourned subject to call from the Pres. and Sec'y.

W. J. WEEKS,
Sec'y Treas.
Sept. 29/93.

Office W.F.M.

Meeting of local members of Executive board to consider telegrams from Coeur D'Alenes.

Present: President John Gilligan, Anthony Mathews, Patrick Gallagher and Sec'y.

On Motion a check for One Hundred and fifty Dollars is drawn in favor of John Gilligan to defray the expenses of himself, Patrick Gallagher and W. J. Weeks to the Coeur D'Alenes.

Meeting adjourned subject to call.

W. J. WEEKS,
Sec. Treas.
Oct. 11, 1893.

Office W.F.M.

Meeting local members of Executive.

Present: President, John Gilligan, Anthony Mathews, Patrick Gallagher and Sec'y.

On Motion, John Gilligan is given Five Hundred Dollars and instructed to take the same to the distressed Families in the Coeur D'Alenes and to stop at Iron Mountain and try to organize a Union there and that he be given Fifty Dollars additional for expenses.

Meeting adjourned subject to call.

W. J. WEEKS,
Sec'y. Treas. [472]

Salt Lake City, May 14, 1894.

Meeting of Annual Convention of Western Federation of Miners:

Meeting called to order by President John Gilligan.

On Roll call of officers.

President John Gilligan.

2d Vice President John Duggan.

Sec'y Treas. W. J. Weeks.

Executive Board: John McLeod, James Millett, Pat Gallagher and Anthony Mathews were present.

1st Vice President, D. D. Goode and Warden Wm. Cunningham were absent.

On Motion All except Officers of the W. F. M. retire till the Executive Board act on Credentials.

On Motion the following delegates are admitted from Butte.

Frank Hunter	2	Votes
Wm. Welsh	2	"
Jos. Thomas	2	"
Richard Thomas	2	"
Chas. Obrien	2	"
John Gilligan	1	"
Henry Davis	1	"
Pat Gallagher	1	"
Anthony Mathews	1	"
W. J. Weeks	1	"
Granite, Jas. Millett	1	"
Gem and Martina, T. C. Reed	2	"
Burke, Jas. Clancy	1	"
Belt Mountain, Henry Tegtmeier	1	Vote
Central C'y, Jos. Hinton	1	Vote

Eureka, John Duggan	1	“
Lead C’y, J. C. Green	2½	“
A. J. Coram	2½	“
Terrys Peak, C. S. Hudson	1	“
Aspen, P. H. Clifford	2	“
Wardner, Ed. Boyce	1	“
Free Coinage, John Caldewood	1	“
Ex. Board, John McLeod		

On Motion Convention adjournes till 9 o’clock A.
M., May 15, 1894.

W. J. WEEKS,
Sec’y.

Approved

W. J. W. [473]

Salt Lake City, May 15, 1894.

Meeting called to order by President John Gilligan.

Roll call of Officers.

Present: John Gilligan, Vice-President; John Duggan; Executive Board, John McLeod, Jas. Mill-ett, Pat Gallagher and Anthony Mathews.

Minutes of previous meeting read and approved.

On Motion recess taken till Sec’y Treas. arrives.

On Motion report of Sec’y Treas. is referred to the
of Executive Board.

On Motion A. J. Coram, John Duggan and Chas. Obrien were appointed as an Auditing committee to look over all financial affairs of the W. F. M.

On Motion Rules were suspended to allow a man to come into the hall to get books.

On Motion We again take up the regular order of business.

On Motion report of Sec'y Treas. is referred to the Auditing committee and that all receipts, books etc. pertaining to the finances of the W. F. M. be turned over to them.

On Motion Convention adjourns till such time as the Auditing Committee is ready to report Vote 12 for and 9 against.

W. J. WEEKS,
Sec'y.

Salt Lake City, May 16, 1894.

Meeting called to order at 9.15 A. M.

President John Gilligan in the chair.

Roll call of officers.

John Gilligan, President.

John Duggan, Vice-President.

W. J. Weeks, Secy-Treas.

John McLeod.

Anthony Mathews.

James Millett.

and Patrick Gallagher, Ex Board.

Minutes of previous meeting approved as read.

[474]

On Motion the report of the Auditing committee is referred back for completion and the services of the Sec'y-Treas. is to be at their disposal.

On Motion a recess is taken till such time as the Auditing Committee is ready to report.

W. J. WEEKS,
Sec'y.

Salt Lake, May 16, 1894.

Afternoon Session.

Meeting called to order by President John Gilligan at 1 o'clock P. M.

Reading communication from Wardner, Idaho. No action on it.

On Motion Report of Auditing Committee is read and accepted.

On Motion Committee of one is appointed to inform M. J. Elliot that he shall have the floor when he appears.

On Motion a committee of one from each state is appointed as a committee on resolutions.

On Motion Said committee is committee on press committee; Frank Hunter, C. S. Hudson, John Duggan, Ed Boyce, John Caldewood.

On Motion Committee of five appointed on Constitution.

JOS. THOMAS,
JOS. HINTON and
T. C. REED,
J. DUGGAN,
P. H. CLIFFORD,

are appointed on the Committee.

On Motion Rules are suspended and M. J. Elliot of the A. R. U. is given the floor; he speaks on the necessity of Federation and on the economic questions of the day and the necessity of labor bodies endeavoring to obtain legislation in their favor.

He is followed by Bro's. Henry Davis, A. J. Coram, Ed Boyce, John McLeod, John Duggan, Wm. Walsh and John Caldewood. [475]

On Motion A vote of thanks is given to Bro. M. J. Elliot for appearing among us.

On Motion we proceed with the regular order of business.

On Motion a communication from Bro. J. F. Whelan of Mullan is laid over till tomorrow.

On Motion a committee of five is appointed on Ritual Henry David, J. C. Green, Henry Tegtmeier, John McLeod and Jas. Millett are appointed.

On Motion A communication from Martina is placed on file be laid on the table till to-morrow.

On Motion Convention Adjourns till 9 o'clock A. M. to-morrow.

W. J. WEEKS,
Secy.

Salt Lake, May 17, 1894.

Meeting called to order at 11:10 A. M. President John Gilligan in the chair.

Minuits of previous meeting read and approved.

Report of Special committees.

Reading report of committee on ritchule.

On Motion the report of committee was received & committee Discharged.

Report of Committee on constitution and B Laws.

Moved & Sec. that we accept the report of committee and take it up section by Section for consideration carried.

Moved & Sec. that this body go into a committee of the whole for the consideration of Amendments to constitution & By Laws carrd.

Bro. A. J. Coram was then called to the chair.

1st Reading Amendment to Article 2, Section 4.

Moved & Sec. that the amendment be adopted as read. Amended that the words provided that be stricken out and the word But be inserted. Carried Unanimous Vote. [476]

On Amendment to Art. 2, Sect. 4, of the Constitution but no member shall be eligible as a delegate who has not been a member of the local union at least 12 months except in case of a union not organized that length of time.

On Motion Committee of the whole do now rise and report here at 1:30 P. M. sharp.

ANTHONY MATHEWS,

Secy. Pro. Tem.

Salt Lake, May 17, 1894.

Afternoon Session.

Meeting called to order by Chairman A. J. Coram.

Roll call of Officers.

Reading additional section to be known as section 8 of by-laws.

On Motion This section was adopted by unanimous vote.

Amendment to by-laws.

If a member takes a withdrawal card from the union he belongs to and shall happen to go to work at mining in another place, when there is a union belonging to the Federation he shall at once deposit his card in that union and if he fails to do so he shall have to pay his regular initiation fee of that union.

Reading additional section to by-laws to be known as section 9.

Carried unanimously.

Amendment. Any Bro. going to another union

camp shall immediately after he has located therein deposit a transfer card from his union which when accepted shall make him a member in good standing of such union.

Reading Amendment to sect. 5 of constitution.
Adopted unanimous.

Amendment. Duties of Sec'y and Treas.

Within the first week of April annually the Sec'y and Treas. [477] shall send to each local union two blank forms of credentials for Delegates and Alternates to Annual Convention, one of which shall be filled after election and signed by Delegate President and recording Sec'y and sealed with the seal of the union and forwarded to the Sec'y Treas. of the W. F. M. The second to be presented in same form to convention by delegate or alternate.

substitute

~~On~~ Read in ~~amendment~~ to Section Eleven of by-laws carried unanimous ~~Amendment~~ substitute.

The pay of Officers and delegates to the Annual convention of the Western Federation of Miners shall be Five Dollars per day while attending convention which shall be paid by the local union all stage and railroad expenses shall be paid by the Western Federation of Miners, resident Delegates shall be paid only the prevailing wages ~~of~~ if convention shall be held in a union town.

Reading of Additional Section to be known as Section 12 of by-laws Section adopted unanimously as follows:

These by-laws shall not be altered or Amended except at a regular session of the Federation and with

the concurrence of two-thirds of the Delegates and alternates present.

On Motion Committee of the whole rise and proceed with the regular order of business.

On Motion we suspend regular order of business and Bro. M. J. Elliot of the A. R. U. is admitted to the hall. (Bro. Elliott could not be found.)

On Motion we again take up regular order of business.

On Motion we do now adopt report of committee on Constitution and by-laws as a whole.

Reading report of committee on resolutions and press.

On Motion report referred back to committee for additional resolutions.

On Motion this body extend a vote of thanks to the Salt Lake fire department and other citizens for the courtesy extended us while in the city. [478]

On Motion this matter is referred to the committees on press for publication.

On Motion Chair appoints as assistant Sec'y to help Sec'y make out a report for all the different unions.

Anthony Mathews is appointed.

On Motion we adjourn till 10 o'clock A. M. tomorrow morning.

ANTHONY MATHEWS,

Sec'y Pro. Tem.

Minutes corrected as follows by canceling the substitute to Sect. 11 of the By-laws and that the following be ~~known~~ inserted. The Pay of Officers and delegates to the annual convention of the Western

Federation of Miners shall be Five Dollars per day while attending convention which shall be paid by Local Union except the Officers who shall be paid by the Federation unless he be an elected delegate all stage and Railroad expenses shall be paid by the W. F. M. resident delegates shall be paid only the prevailing wages where the convention shall be held in a union town.

W. J.,
Secy.

Salt Lake, May 18, 1894.

Meeting called to order by President John Gilligan. Roll call of officers and delegates.

Reading of minutes of previous meeting and approved as corrected.

Communications and correspondence.

On Motion we now take up the communication of Martina Miners Union.

On Motion Sec'y and Treas. is instructed to write to all the Senators and congressmen of the North West under the Seal of the W. F. M. and ask them to do all in their power to defeat the bill in relation to assessment work on Mining claims introduced by Senator Shoup of Idaho. Vote 17 for. 3 against.
[479]

On Motion we take up and read resolution of committee on resolutions and press.

On Motion Resolutions be now adopted as a whole subject to correction of committee.

The following resolutions have been adopted by the convention:

WHEREAS, Recent events have shown that the

military arm of the Government is intended and maintained solely for the protection of capital regardless of the civil rights of toilers, and

WHEREAS, The greed of capital, aided by political tools, has succeeded in amassing billions of wealth through corrupt legislation. We condemn the present tendency of capitalistic tyrants to concentrate in the forms of combination and trusts for the purpose of better enabling them to oppress and coerce labor to work for starvation wages, therefore be it

1. RESOLVED, That we call on all branches of organized labor to unite under one common head through State and National organizations for the purpose of immediate protection, and that we may better concentrate our efforts at the ballot box for the enacting of laws beneficial to the masses of the people and the repeal of all laws which place capital above labor.

2. RESOLVED, That the militia shall be used only after the ordinary local or county peace officers have been proven insufficient to protect person and property, and not as a menace to labor and an ally of capital in the oppression of labor.

3. RESOLVED, That we will use every lawful influence to elect to Congress and State Legislatures men who will pledge themselves to work and vote for a repeal of the (silver) demonetization law of 1873.

4. RESOLVED, That we will work to secure the enactment of a proper liability law, and effective mine inspection law and the election of Mine Inspectors and the gradual reduction of working hours in mines to eight hours per day, the abolishing of

Sunday work in order to promote [480] the moral, social and intellectual welfare of the people through religion, rest and recreation.

5. RESOLVED, That we will labor to establish and maintain a fund by equal contribution from all miners for payment of an accident insurance, and in case of death or total disability, a reasonable amount to be paid to their family or nearest relatives.

6. RESOLVED, That we deem as the best means to secure equality and justice through law; and that we will work unceasingly to establish the initiative and referendum and thus make the people the actual rulers instead of plutocrats and politicians.

7. RESOLVED, That owing to the millions of willing workers now idle, we demand the strict enforcement of the present pauper immigration laws now on our statute books and the enactment by Congress of a law establishing compulsory arbitration in every case of wage dispute between employers and employees in every protected industry so that the benefits of protection may be more equally distributed.

8. RESOLVED, That we demand the enactment of a graduated income tax, a postal savings law and the loan direct to the people on approved real estate security in sums more than 50 per cent of assessed valuation, at a rate of interest not to exceed 3 per cent and the Government ownership of railroads and telegraphs.

9. RESOLVED, That as wolves could not be entrusted to legislate for the good of sheep, neither should bankers be further entrusted with the finan-

cial legislation of our country, and therefore, we demand that the law of January 16, 1790, be enforced, which reads, "Nor shall any person holding an office or stock in any institution in the nature of a bank for issuing or discounting bills or notes payable to bearer on order, under the authority of the United States, be a member of either while he holds such."

10. RESOLVED, That we are in favor of the free and unlimited coinage of silver, at the ratio of 16 to 1; and we are opposed to the [481] further issue of interest bearing bonds, and we approve the stand taken by the members of Congress in favor of silver, and condemn those members opposing it. We approve the action taken by General Master Workman Sovereign in opposing the recent issue of bonds.

11. RESOLVED, That we recognize in the victory by the Great Northern employees, under the able leadership of the Hon. E. V. Debs, as President of the American Railway Union, as the greatest victory gained by labor in the last quarter of a century, and we would commend the said organization to all railroad employees of the United States as the only possible means of stopping the encroachments of the general managers' association. And we also endorse the action of Judge Caldwell for the fearless manner in which he rendered his late decision in favor of the Union Pacific employees, despite the pressure of organized corporate wealth.

12. RESOLVED, That as a petition bearing over 700 signatures from the people of Northern Idaho was duly presented to William J. McConnell, Governor of Idaho, praying for the removal of the Mine

Inspector for incompetency and refusing to perform his duty when called upon by the labor organizations of the Coeur D'Alene mining district for the proper method of protecting human life in the Bunker Hill and Sullivan Mines, under the cloak of justice to all parties concerned, Governor McConnell came to Coeur D'Alene to make a thorough investigation, proved him to be an enemy of organized labor and a staunch friend of corporations, by his treacherous action in turning this petition over to the hirelings of the Bunker Hill and Sullivan companies, to be used as a blacklist against all men signing said petition; therefore be it

RESOLVED, By the Western Federation of Miners, that we appeal to all true citizens of Idaho to unite with the common purpose in view of relegating such capitalistic minions, in the guise of political servants of the oblivion their action so justly merits.

[482]

13. RESOLVED, That we demand the immediate release of our brothers now held as prisoners by the Government, better known as the Industrial Army, and that we condemn in the strongest language the cruel action of those tyrants who are now persecuting those men with relentless barbarity.

14. RESOLVED, That we condemn the action of Congress for not investigating the late trouble in the Coeur D'Alene where a conspiracy between the Executive Department of the State of Idaho and the Mine Owners' Protective Association of the Coeur D'Alene existed, and that through said conspiracy citizens of the commonwealth in Idaho were mur-

dered and others falsely imprisoned, and that by misrepresentation of facts, the United States military were made innocent abettors. More especially do we condemn the action of Idaho's Representatives now in Washington as the willing tools of capitalistic corporations for not demanding a thorough investigation of the said trouble, as we firmly believe that they are animated with no other motive than to shield Judge Beattie from impeachment, which he so justly deserved, and further their own political aspirations.

15. RESOLVED, That we do rejoice and approve of the noble fight made by our brothers in the Coeur D'Alene and Cripple Creek mining districts and promise them our most hearty support in their fight for home and justice.

16. BE IT FURTHER RESOLVED, That we denounce the utterance of Colorado's Junior senator, Ed. O. Wolcott, in his speech of April 26, as an infamous falsehood, and that when Senator Wolcott made said statements he did so with the full knowledge of the condition of the working people throughout the country, and that we deem it a willful lie and an open bid for trusts and corporations to send him back to the Senate of the United States. We, therefore, ask that the masses of the people whom he knowingly misrepresented, will use their utmost endeavors to have him retired from public life. [483]

17. RESOLVED, That we condemn in immeasurable terms the action of the local authorities of El Paso County, Colorado, and all other citizens who, in any way, manner or form aided or abetted the lo-

cal authorities of said county in their misrepresentations to Governor Waite, and more especially Sheriff Bowers, who, we firmly believe, entered into a conspiracy with the so-called Mine Owners' Protective Association of Cripple Creek District to have innocent citizens arrested and falsely imprisoned in loathsome cells in the county jail of El Paso County, to the great injury of their health and character, and for no crime other than that they were members of a labor organization, as was proven by the District Attorney of said county requesting the discharge of Brother John Calderwood without even the form of a trial.

18. RESOLVED, That we commend the action of Governor Waite in withdrawing the State militia from Cripple Creek, Colorado, when he found out the true situation of affairs, as we are thoroughly convinced from careful investigation that it was only after great pressure had been brought to bear upon him by representations that he sent them. Therefore, we exonerate Governor Waite from all blame and declare him the true friend of the laboring people.

CHARLES S. HUDSON,

Chairman.

JOHN CALDERWOOD,

EDWARD BOYCE,

JOHN DUGGAN,

Committee.

On Motion we now take up the communication of Bro. J. F. Whelan be now taken up.

On Motion Sec'y Treas. is instructed to notify

Bro. Whelan that the suggestion of his communication are nearly all carried out excepting that part relating co operation.

On Motion we adjourn till 1.30 P. M.

W. J. WEEKS,
Sec'y. [484]

Afternoon Session.

Meeting called to order at 1.30 P. M.

Bro. Frank Hunter has the Floor to a question of privilege.

Communication of Bro. H. S. Davis read and rejected.

On Motion bill for Hall rent is laid over till after good and welfare of the Body.

On Motion Communication of Bro. Ed. Boyce is laid over till good and welfare.

On Motion the matter of insurance is turned over to the new Executive Board with instructions to draft a plan and submit it to the local unions of the W. F. M.

On Motion Matter of establishing cipher code ~~be~~ is referred to new Executive Board.

On Motion we take an informal recess of five minutes to give committee on resolutions time to report.

On Motion Bro. Ed. Boyce is instructed to wire Wallace or Wardner and inquire as to the truth or falsity of dispatches published in Salt Lake Tribune.

On Motion recess is taken till 4 o'clock.

After recess.

On Motion Salary of Sec'y Treas. is put at Fifty Dollars per month.

On Motion Jos. Poyntons name is erased from the

Charter with red ink and that notice of the same be published in the Butte Bystander.

On Motion Head quarters of the W. F. M. for the next year will be where the majority of the Executive Board is.

On Motion Each Delegate is instructed to notify his union of the action of this convention in relation to Jos. Poynton and that the Sec'y and Treas. be instructed to erase the name from all new Charters issued.

On Motion Sec'y Treas. is instructed to notify all Organizers, [485] that it is the sentiment of ~~this~~ the W. F. M. to organize all Coal Miners, Chinese excluded, in the W. F. M. and that each Delegate notify his union of the same.

On Motion Election of Officers passed for the evening and we work under good and welfare of the body.

On Motion we adjourn till 9 o'clock tomorrow morning.

W. J. WEEKS,
Secy.

Salt Lake, May 19, 1894.

Meeting called to order by President John Gilligan.

Roll call of Officers.

On Motion Reading Minutes suspended and take up business where we left off last night.

On Motion Bro. Boyce of Idaho is instructed to notify the unions of his district to fight for the W. F. M. first, last and all the time.

On Motion we accept invitation of Riley and Flood with thanks.

On Motion Matter of Lead and Central Cy. be all left in the hands of the Executive Board.

On Motion We take a recess till 12.30 P. M.

W. J. WEEKS,

Secy.

Salt Lake, May 19, 1894.

After recess.

On Motion Committee on press instructed to publish full report relating to Coeur D'Alene matters.

On Motion report of committee on Press relating to vote of thanks to the citizens and fire Department of Salt Lake be published in Butte Bystander and copies be forwarded to Salt Lake to them.

On Motion a black Book be kept by the Sec'y Treas. and ~~at~~ the names of all Non Union Men be inserted in the same and that a copy of same be forwarded to all local unions in the W. F. M. [486]

On Motion We Ballot for the place of holding next convention. No Choice.

On Motion Recess taken till 7 o'clock P. M.

After recess.

~~On Motion~~ Balloting.

Denver receives a Majority of 7 Votes.

On Motion matter of Expenses be left with the new Executive Board and they be instructed to give to the Delegates sufficient money to get home on and the bill be deducted from the amount due Delegates.

Nominations for Officers declared in order.

Nominations for President declared in order.

Nom. Jos. Thomas, W. J. Weeks.

W. J. Weeks declared elected.

Nominations for 1st Vice-Pres. in order.

Nom. Ed. Boyce, Jas. Millett.

Jas. Millett Declared Elected.

Nominations for 2d Vice-President in order.

Nom. P. H. Clifford.

On Motion Sec'y cast unanimous vote of convention carried.

Nominations for Sec'y-Treas. declared in order.

Nom. John Duggan, Wm. Walsh.

Wm. Walsh declared elected.

Nominations for warden in Order. Nom. T. C. Reed, N. S. Davis, H. S. Davis declared elected.

Nominations for Executive committee in Order.

Nom. John McLeod, Ed. Boyce, Richard Thomas, John Gilligan, J. C. Green.

On Motion John Duggan is allowed the full amount of his expenses to this convention.

On Motion we adjourn "~~Sine Die~~" to meet in Sine Die at 10.10 P. M.

W. J. WEEKS,

Secy. [487]

Butte City, May the 22, 1894.

A regular Meeting of the executive Board.

One Motion of Brother Gilleang Resignation of J. McLeod be excepted and his successor be elected. Carried unanimous.

Ed. Boice. Efermatoal.

Richard Thomas.

J. Gillegan.

On Motion that John Caldewood be elected as a member of the Exective Board Carried unanimous.

Edd. Boice. Effermative.

Richard Thomas.

J. Gillegan.

On Motion Exective Board the Bills Be allowed and ordered paid.

On Motion the Delegates from Jem and Burk be instructed to pay their pecapity tax to the Sec. and treasurer and take a receipt for the same.

On Motion that the Secretary be instructed to write to the Unions of the Black Hills and state facts as near as possibel. Carried.

P. One motion that the Sec. be instructed to rite to the different ~~off~~ Unions of Dacota and tell them to come te gather and agree one one man to Be elected as State Organiser. Carried.

One motion to ~~adurn~~ ajurn subject to call of present or Sec.-Treas. Carried.

June the 15.

Meeting of the exective Board.

Meeting called to order, W. J. Weeks presiding.

On Motion that preasant procede to Sand Cooley and organize a union their.

On Motion that Brother Thomas accompany Brother Weeks and render him all assistance in his power.

On Motion that the Sec. be instructed to draw fifty doll. in [488] favor of Richard Thomas to defray his expences. Carried.

On Motion to adjourn sbject to call of Present, or Sec.-Tr.

May the 18—1894.

Meeting of the executive board.

One motion that Preasant and Sec.-Tres. accompany deligates to Idaho and to adjust matters iff possibly. Carried.

Butte City, August 14, 1894.

Expences to W. J. Weeks and William Walsh For trip to the Courdelains:

Fair to Garson and return.....	\$ 10.40
Fair to Mousla and return	14.80
18 days work at \$3.00 per day.....	54.00
Hand car fair wagon and ferry	150.00
From hirseplains to duncon.....	4.00
Grub beads and soforth	36.00
Fair from revella to mouslar	3.00

William Walsh Organizer to Basin 3 per day and expences.

On Motion that the sentral miners union of the Cordelains be instructed to investigate that man Wilson case and to give him a fair trial and inform us of the same and if failing to do the Same the executive board will, take action on him.

Ajourned subject to call of Sec. Tres. or present.

On Motion that we draw fifty Dollars to pay expences of those too men to the Cordelains.

On Motion te adjourn subject to call of Sec. or president.

On Motion that presnt. W. J. Weeks prosede to Belt and do all in his power to Settle the trouble.

On Motion to ajourn Subject to call of Sec.-Treas.

Butte, Sep. 13, 1894.

Meeting of the Exective Board.

On Motion that a copy of the minutes of the convention be printed and a copy Sent to all Local Unions.

On Motion to adjurn Subject to call of the Sec.-Treas. or President. [489]

Butte, Feb. 1st, 1895.

At a meeting of the members of the Executive Board the resignation of Wm. Walsh was presented, and accepted.

W. H. Eddy was then appointed until the outside members of the Board could be heard from on receiving, communications from Bro. John Calderwood Edward, P. H. Clifford, W. H. Eddy was unanimously appointed.

Office of the W. F. of M., March 26/95.

At a meeting of the Board an appeal was read from The Central Union of the Cour D'Alene, Idaho, when it was resolved that we send them two hundred dollars to afford them temporary relief.

W. H. EDDY,
Secy.-Treas.

Denver, Colo., May 13/95.

Meeting of the Annual convention Called to order by President.

P. H. Clifford in the chair. The President then delivered a short address.

Moved and Seconded that we set aside until 2 o'clock this afternoon to hear from two gentlemen who were here from Louisville to submit a proposi-

tion in regarding to becoming attached to the W. F. of M. Moved & Seconded to postpone indefinitely. Carried.

On Motion a committee of 3 was appointed by the chair on credentials. Committee Thomas Heney, Idaho, E. J. Haughey, Colorado, Thomas McLaughlin, Montana.

On Motion the convention took a recess for 20 or 30 minutes to give the committee to prepare a report.

When the committee were ready report The convention was called to order, and report of committee read, and adopted.

The following are the delegates entitled to seats in this convention.

Butte, Montana.

James Maher.	Dand Coulee, Montana.
Chas. O'Brien.	Thomas Graham.
Patrick Gallagher.	Belt Creek, Montana.
S. M. Roberts.	Robert Hendry.
Thos. McLaughlin. [490]	Clancy, by proxy.
Altman, Colorado.	Geo. B. Dwyer.
James Leonard,	Granite, Mont.
Frank Wolfe,	John Bevan.
Anaconda, Colo.	James Duffy.
J. J. Mangan.	Winston, Mont.
Ouray, Colo.	R. F. White.
E. T. Haughey.	Basin, Montana.
S. Dakota.	Jerry Mahoney.
Charles N. Alexander.	Belt Mountain, Mont.
Silverton, Colo.	Geo. B. Dwyer.
John Carver, Jas. Cox.	Victor, Colo.

Arthur Beaser.	Daniel Kildee.
Wardner, Idaho.	Burke, Idaho.
Ed. Boyce.	Thos. Heney,
Gem, Idaho.	J. J. Purcell. [491]
Edward Brady.	

On Motion the delegate from Aspen was admitted to a seat until his credentials came.

Officers, President, P. H. Clifford; Sec., W. H. Eddy.

Executive Board, John Gilligan, R. Thomas, Edward Boyce, John Calderwood.

S. M. Roberts appointed Vice-President.

Communications & correspondence under this head, the resignation of Warden H. S. Davis was read and on motion accepted.

On Motion Bro. Charles N. Alexander of Terry Peak Union, S. Dakota, was elected assistant Secretary.

Report of Officers.

Report of Sec.-Treas. read and on motion was referred to the Auditing committee.

On Motion a committee of three were appointed to Audit the books of the Sec.-Treas. consisting of Frank Wolfe, James Maher, John Bevan.

Moved and Seconded that a Com. of 3 be appointed on resolutions carried. Chair appointed.

Edward Boyce.	C. N. Alexander.
Thos. McLaughlin.	E. T. Haughey.
Thos. Graham.	

On Motion John Calderwood, S. M. Roberts, J. J. Purcell were appointed as a committee on Press.

On Motion a committee of 5 were appointed on constitution By-Laws & Ritual, Namely,—

James Cox, James Leonard, Jas. Duffy, Jerry Mahoney, Dan Kildee.

On grievance, Geo. Pert, R. F. White, Thos. Heney.

Moved and Seconded the case of The Gentleman from Louisville be referred to committee on credentials. Carried.

On Motion we do not take a recess till 2: P. M. Carried.

W. H. EDDY,

Sec. [492]

Afternoon Secession, May 13/95.

Meeting called to at 2:10, President Clifford Presiding.

Moved and Seconded the Gentlemen from Louisville be admitted to the floor of this hall to make their statement and we take a recess. It is moved to suspend the rules to admit those gentlemen. Motion to suspend the rules prevailed. Geo. Clark, Henry Denman, they were then admitted to hall when they made their statement, saying that they were in favor of federating with the W. F. of M.

On Motion the gentlemen were given a vote of thanks.

On Motion we do now take up the regular order of Business.

Moved and Seconded we do now adjourn, until tomorrow Morning at 9 o'clock. Carried.

W. H. EDDY,

Secretary.

Denver, Colo., May 14, 1895.

Convention of W. F. of M. Called to order by President Clifford in the chair.

On Roll call all delegates were present but Richard Thomas.

Minutes of Previous Meeting read and approved.

Reports of Committees.

Auditing reported as follows: We, the committee on account of report of Sec.-Treas., find a balance on hand as per Report of Sec.-Treas., \$2642.47, as follows: \$917 in favor of Cripple; \$113.50 in favor of Barker Miner's Union, \$1611.97; in favor of General fund. We will state to the Federation that it was an impossibility to figure out an account of Sec.-Treas. Walsh and were compelled to follow the figures and account of Present Sec.-Treas. and find them correct. We recommend from this time on that Sec.-Treas. keep Separate account of all transactions in index form, also that each union be requested at annual convention to send a full report of moneys paid to and received from Federation.

Signed

FRANK WOLFE,
JAMES MAHER,
JOHN BORAN,

Committee. [493]

Moved and Seconded The report be adopted and recommendations of Com. be carried out. Carried.

Committee on credentials reported Credentials of Delegate Peart of Aspen had come.

Report received.

On Motion the committee on press meet here for 30 minutes after each meeting. And that any member sojourning in this City of any local union of the W. F. of M. be extended an invitation to this convention. Carried.

Committee reported progress.

Committee on Constitution and Ritual reported progress.

New Business.

On Motion a committee of 3 was appointed to extend an invitation to the Various labor leaders of Denver to visit our convention at their convenience. Chair appointed Edward Boyce, Geo. B. Dwyer, John Calderwood.

Communication from John McBride in relation to federating with A. M. of L. read and laid over to come up again.

The question of electing a general organizer was introduced and discussed lengthly.

Communication from W. H. Harkins read. No action. Moved and seconded that this Convention elect a general organizer, and the committee on Constitution draft an Article to Constitution covering this matter.

Recess till 2 o'clock P. M.

W. H. EDDY,
Sec.

Afternoon Session.

Meeting called to order at 2:5 o'clock by the President.

Good and welfare of the Federation—under this head the case of David Tobin who had been a mem-

ber of one of the locals in the Coeur D'Alene, and had been expelled for Scabbing and other misconduct as a [494] union man came up, and was discussed. On Motion the action of the local to which he belonged was ratified, one Vote dissenting.

On Motion the Cases of Wm. Seymour of Granite Miners' Union, and Michael J. Norton, of Belt Mountain were referred to the incoming executive board.

The case of W. J. Weeks then Came up and it was discussed Pro. and con. for a considerable time, finally a committee of 5 were appointed by the chair to investigate the case.

Committee, Chas. N. Alexander, J. J. Purcell, John Bevan, Chas. O'Brien & James Leonard.

Moved and seconded we do now adjourn till 9 o'clock tomorrow Morning. Carried.

W. H. EDDY,

Sec.

Denver, Colo., May 15, 1895.

Convention of W. F. of M.

Called to order by President J. H. Clifford.

Minutes of previous read and approved.

Communications & Correspondence.

Communications from E. J. Sanford certifying to the credentials of Geo. B. Dwyer, Their delegate to this convention read and accepted.

Reports of Committees.

Committee on Constitution, Reports progress, Com. on Initiation reports progress, Committee on Resolutions reported progress, committee on investigation of W. J. Weeks case reported progress.

On Motion The convention took a recess until 2 o'clock to give the various committees an opportunity to complete Their reports.

W. H. EDDY,

Sec.

Denver, Colo., May 15, 1895.

Afternoon Session. Meeting called to order at 2:10 o'clock [495] by the president in the Chair: The President then introduced Mr. Kenehan, President of the Denver Trades and Labor assembly & Vice-President of the A. F. of L. who addressed the convention on the subject of affiliating with the A. F. of L. At the close of his remarks it was moved and seconded that this convention extend a Vote of thanks to Mr. Kenehan for coming among us and that we do wish him God speed on his journey, and a safe return. Carried unanimously.

A communication from Retail Clerks union #7 was received extending us an invitation to attend their Annual entertainment and Ball to be given in the Mining Exchange Hall on the 16th inst., 1895.

On Motion it was accepted, Secretary instructed to reply to it, and that it be placed on file.

On Motion the convention then adjourned until tomorrow morning at 9 o'clock.

W. H. EDDY,

Sec.

Denver, Colo., May 16th, 1895.

Convention called to order by President Clifford in the Chair.

Minutes of Previous Session read and adopted.

Communication from John McBride received, Ex-

tending an invitation to the W. F. of M. to Offiliate with the A. F. of L. On Motion the Communication was accepted.

Reports of Committees.

Report of Committee Ritual read. Moved & Seconded that we do resolve ourselves into a committee of the whole with the president in the chair, to take up the report of the Committee on Ritual Section by Section. Motion prevailed. The report of the committee was then taken up Section by Section and adopted as they were read.

It is moved and seconded that the committee of the whole do now rise and report in favor of adopting the report as a whole carried. The report was then adopted as a whole.

Committee on Constitution. Report of committee read.

On Motion we take it up Section by Section, ~~carried~~ with the [496] Chair Man of the Committee on Constitution in the Chair. Carried.

On Motion The Convention then took a recess till 1:30 P. M.

Afternoon Session called to order by Chairman of the committee of the whole James Cox.

The Convention then resumed the consideration of the report of committee on constitution. Amendment to Section 1, of Article 3, by inserting the words General Organizer after the word Warden. Adopted as read by a Vote of 47 to 4.

Amendment to Section 3 of Article by inserting General Organizer after the words Executive Committee in filling vacancies. Carried unanimously.

Article 3, further amended by adding Section 8, which is as follows: Duties of General Organizer: It shall be the duty of the General Organizer to immediately place himself in communication with persons living in camps where the W. F. of M. does not exist and have them organized as soon as possible subject to the approval of the Executive Committee. For his services he shall receive \$5.00 five dollars per day and transportation while at work. Said expenses shall come out of Contingent fund set aside by the Executive Board of which one dollar of the initiation fee of each initiate shall be in the new locals Shall be collected for the period of 3 months and those initiated within that time shall be known as charter members and if said collections are not sufficient to meet the expense of organizing the Sec.-Treas. shall collect the deficiency by assessments levied on all members under the jurisdiction of the W. F. of M. Adopted.

To further Amend Article 3; by adding the following to be known as section 9: The organizer on organizing a local shall immediately forward notice to the Sec. Treas. giving names of officers and their P. O. address, and order for supplies at the expense of said local. Adopted.

To amend article 5, by striking out section 1, and insert the following: Should any trouble arise in an unorganized district while [497] the General Organizer is unable to attend, the president with the approval of the Executive Board shall appoint a temporary organizer in case of an emergency and said temporary organizer to be appointed from the near-

est union to the district that wishes to be organized.
Adopted.

To amend Section 1 of Article 3 by striking out the warden. Adopted.

Section 2 of Article 3. Nominations of officers of this federation shall be made from the floor, but election must be by ballot. Should no candidate receive a majority of the votes cast the candidate securing the lowest number of votes shall be dropped and another ballot taken and this procedure continues until some candidate receives a majority of all votes cast—Adopted.

Amendments to ByLaws.

By adding Article 2—Section 1.

Any member or members of the W. F. of M. leaving the jurisdiction of the W. F. of M. for a period of 12 months or more and said member or members neglecting to take a withdrawal card will be held for 12 months' dues and two assessments to the local union to which the member belonged: Provided such assessments have been levied. Adopted Section 2, Local unions shall preserve all receipts issued by the Sec-Treasurer and shall have the same presented to the finance committee through their delegates to the Annual Convention of the W. F. of M. in order to Compare them with the Stubs of the receipt books of Sec-Treas. Adopted.

Com. of the whole rose, reported progress.

Committee on Resolutions reported. Resolutions Read, Moved and seconded. They be adopted and a copy given to the press for publication. Carried.

Committee is continued to draft Resolutions of condolence on the death of James Millett of Granite, and John Duggan.

On Motion The convention then adjourned until tomorrow morning at 9 O'clock

W. H. EDDY,
Sec. [498]

Denver, Colo., May 17th, 1895.

Meeting of Executive called to order by Chairman of the board P. H. Clifford.

Members present, P. H. Clifford, Richard Thomas, John Gilligan, Edward Boyce, John Calderwood.

On Motion the following bills for Transportation to Denver, Colo., were allowed and ordered paid:

Jerry Mahoney.....	3.70
John Bevan.....	6.10
James Duffy.....	6.10
James Cox.....	41.00
E. T. Haughey.....	31.30
Cripple Creek delegation.....	37.00
Geo. B. Dwyer.....	26.40
Dan Kildee.....	70.00
J. J. Purcell.....	70.00
Chas. N. Alexander.....	50.70
Thos. Heeney.....	70.00
John Carver.....	40.00
Robert Hendry.....	20.40
Thomas Graham.....	19.30
Edward Brady.....	70.00

Robert F. White.....	12.00	
Edward Boyce.....	70.00	
George Peart.....	24.00	
A. E. Hewey.....	35.30	703.30
Committee then adjourned.		

W. H. EDDY,
Sec.

Denver, Colo., May 17, 1895.

Convention called to order. President, P. H. Clifford in the chair.

Roll call all delegates Present but Brady, Kildee, Thomas.

Minutes of Previous session read and approved.

On Motion The convention resolved itself into a committee of the whole to complete the report of the committee on Constitution and By Laws. Section 3 of Article 2 Adopted Section 4 of Article 2, Adopted Section 5 of Article 2. Adopted Section 6 of Article 2. Adopted Section 7 of Articles 2. All locals shall hold their semi-annual elections of officers on the first meeting nights in March and September [499] each year And the financial Secretary shall send names of officers elected to the Sec. Treas. of the W. F. of M. he shall make out directory of the Same and forward a copy to each local union of the W. F. of M. Adopted.

On Motion the Sec. Treas. was instructed to prepare a list of the Names of the local unions, and names of their officers printed and furnished to each local union in the W. F. of M.

Moved and Seconded the committee do now arise and report carried.

On Motion the amendments to By Laws were adopted by the Convention. Moved to take a recess till 2 o'clock. Carried.

W. H. EDDY,
Sec.

Denver, Colo., May 17th, 1895.

Afternoon Session. Meeting called to order by President P. H. Clifford. Delegates all present.

Report of Committee on resolutions received, and placed on file and copy ordered given to the press. On Motion all resolutions be given to the press tonight. Carried. Report of grievance committee read, and on motion was recommitted. Investigating Committee on W. J. Week's case report progress. New business.

Under this head the question of Federating with the A. F. of L. was taken up. Moved and seconded that we do federate with the A. F. of L.. A long discussion followed for and against when it was moved to refrain from further discussion until tomorrow morning at 9 o'clock. Carried. Moved and Seconded the committee on conference with a like committee from Trades Assembly use their endeavors to get exgovernor David H. Wait, Myron Reed & Herb George to Address the public meeting to be held in this hall tomorrow night. Carried.

Moved to adjourn until tomorrow morning at 9 o'clock. Carried.

W. H. EDDY,
Sec. [500]

Denver, Colo., May 18, 1895.

Meeting called to order by the Pres.

P. H. Clifford in the chair.

Roll call.

Minutes of previous Session read and approved.

Discussion of Federation resumed. Moved and seconded that we do now take a recess until 10:30 o'clock to give the various delegates an opportunity to go to the bank and their checks cashed. Carried.

At 10:30 sharp the Convention was called to order by the President. The question of Fed. again resumed. Previous question is moved and carried. The Vote was then taken on Federation with the following result. The vote being taken by ayes and nays.

Ayes.—P. H. Clifford, John Calderwood, Edward Boyce, Frank Wolfe, James Leonard, Arthur Beaser, Jas. Cox, John Carver, Geo. Peart, A. E. Hewey, Robert Hendry, Thomas Graham, J. J. Purcell, Edward Brady, Thomas Heeney, Dan Kildee, J. J. Mangan, E. T. Haughey, 23 Votes.

Noes.—James Maher, S. M. Roberts, Chas. O'Brien, Thos. McLaughlin, Pat Gallagher, W. H. Eddy, R. Thomas, John Gilligan, John Bevan, Jas. Duffy, Robert F. White, Geo. B. Dwyer, Jerry Mahoney, 28 Votes. C. N. Alexander not Present.

The Question of Federating defeated by a Majority of 5 Vote.

On Motion This question of Federating was referred to the local unions for further discussion—Unanimously.

Moved and Seconded the committee on Press inform the reports that the question had been referred back to the locals for further discussion instead of giving them the affirmative & Negative Vote. Carried.

Report of committee on grievance read. Moved and Seconded that Lead City & Central City local unions be reinstated by paying current quarter per capita tax, and Special Assessment \$1. Carried.

Motion to take a recess till 2: o'clock. Carried.

W. H. WEDD. [501]

May 18, 1895.

Afternoon Session.

Meeting called to order by President Clifford. Motion to dispense with roll call carried. Report of Committees. Report of investigation on W. J. Weeks. Case read and lengthly discussed. Moved and seconded report be accepted and recommendations of committee carried out that it be referred to the New Executive Board and that Board get what evidence they can from W. J. Weeks, and report result to Cripple Creeks Unions at least. On Motion Bro. Elmer Parkison was granted the privilege of the floor to State to the convention what he knew about this question.

The Previous question was moved and on being put to a vote was lost—Report of Committee Adopted.

New Business.

Under this head, it was moved Seconded the head Quarters of the W. F. of M. should be located for the ensuing year. Carried.

Nominations & Election of Officers.

For President, S. M. Roberts, P. Gallagher.

On Motion were closed.

S. M. Roberts received 30 Votes.

Patrick Gallagher, 22 Votes.

S. M. Roberts was declared elected President of the W. F. of M. for the ensuing year.

Nomination & Election for 1st Vice President. James Leonard of Altman, Colo., Nominated. Elected Unanimously. John Bevan of Granite was Nominated for Second Vice Pres. Elected unanimously.

Nominations for Members of Ex. Board, Thos. Graham, Sand Coulee, Mont., Chas. N. Alexander, Terry, South Dak., Geo. B. Dwyer, Neihart, Mont., James Maher, Butte, Mont., R. Thomas, Butte, Mont., Frank Wolfe, Altman, Thomas McLaughlin, Butte, Mont., Frank Wolfe declines.

Vote taken on two members of the Board for Butte. James Maher received 36, Richard Thomas, 28, Thomas McLaughlin, 24. [502]

James Maher & Richard Thomas were declared elected—On Motion. The election of Bros. Maher & Thomas was made unanimous,—Balloting on Chas. N. Alexder, Thomas Graham & Geo. B. Dwyer was then taken up and resulted as follows,

Thomas Graham, 37 Votes.

Chas. N. Alexander, 43.

Geo. B. Dwyer, 11.

Election of Chas. N. Alexander & Thomas Graham were made unanimous.

On Motion The Convention then adjourned till tomorrow morning 9 O'Clock.

W. H. EDDY,
Sec.

Denver, Colorado, May 19th, 1895.

Convention called to order by P. H. Clifford in the chair.

Roll Call. Delegates absent, Thomas Graham, Rob. Hendry, Chas. O'Brien, Rich Thomas, Jerry Mahoney.

Minutes of previous session read and approved. Moved and Seconded we do now take a recess till 10 O'Clock. Carried.

Meeting called to order by the President. Nominations of officers resumed, W. H. Eddy nomination for Secretary-Treasurer.

Moved and Seconded the Nominations for Secretary-Treasurer and that the assistant secretary be instructed to Cast the ballot of this convention for W. H. Eddy for Sec-Treas. Carried.

The Assistant Secretary, Chas. N. Alexander, cast the ballot; W. H. Eddy is declared elected, for the ensuing year, unanimously.

Nominations for General Organizer were declared in order. Nominees, Ed. Boyce, Wardner, Idaho, & Jno. Caldewood, of Victor, Colo. Recess is taken for five minutes to prepare ballots.

Ed Boyce received 35 Votes.

John Calderwood 15 Votes. [503]

Moved to make the Election of Bro. Ed. Boyce unanimous—Carried.

On Motion Edward Boyce is allowed his per diem from the Treasury of the W. F. of M.

Moved and Seconded this Convention Send a delegate to the National Labor Conference & that he be a delegate at large to attend all such conferences at direction of Ex. Board. Carried.

Moved and Seconded his pay come under the head of pay of officers as laid down in the constitution and by Laws. Carried.

Moved and Seconded, The delegates to Conferences report to Sec. Treas. and at next convention. Carried.

Nominations for place to hold next Annual convention.

Denver, Spokane, Anaconda, Mont.; Ogden, Boise City, Idaho, Butte, Mont., Cheyenne, were nominated.

Result of first ballot.		Boise	14	“
Denver	11 Votes	Third Ballot.		
Spokane	7	“	Denver	17
Anaconda	5	“	Spokane	4
Odgen	10	“	Odgen	17
Boise	13	“	Boise	13
Butte	0	“	4th Ballot.	
Cheyenne	4	“	Denver	20 Votes
Second Ballot.		Odgen	18	“
Denver	15 Votes	Boise	13	“
Spokane	5	“	Fifth Ballot.	
Anaconda	1	“	Denver	30
Odgen	16	“	Odgen	21

Denver having received a majority of all Votes cast was declared to be the next place where the

Annual Convention of the W. F. of M. would be held.

Installation of Officers.

The following were installed.

President, S. M. Roberts, Butte, Mont.

First Vice-President, James Leonard, Altman, Colo. [504]

Second Vice-President, John Bevan, Granite, Montana.

Executive Board, Jas. Maher, Butte; Richard Thomas, Butte; Chas. N. Alexander, Terry Peak, S. Dakota; Thomas Graham, Sand Coulee, Mont.; W. H. Eddy, Sec. Treas., Butte; Organizer, Ed Boyce, Wardner, Idaho; Delegate to Labor Conferences, P. H. Clifford.

Moved and Seconded that we Present the janitor of this hall twenty-five dollars for his services Since this convention commenced. Carried.

Moved, Seconded & Carried that we give our Moral Support to other labor organizations to help them to make boycott's more effective.

Moved that this convention give ~~there~~ its delegates instructions to act and cooperate with the other labor organizations for the purpose of passing an eight hour law. Carried.

Moved and Seconded that George Pettybone be and is hereby allowed to become an honorary member of the W. F. of M. for two years. Carried.

Moved and Seconded that the Butte Bystander be made the Official Organ of the W. F. of M. for the Next Year. Carried.

On Motion The convention then took a recess till
1:30 O'Clock.

W. H. EDDY,
Sec.

Afternoon Session called to order by President S. M. Roberts, Good and Welfare. Geo. B. Dwyer exemplified the New Secret Work to the convention.

Moved & Seconded, that when any local of this Federation shall become defunct the Secretary of such shall return what property it may have over to the Sec. Treas. of this Federation. Also send names of members in good standing at time of such local becoming defunct. The Sec. Treas. Shall issue withdrawal to those members. Carried.

Bro. Frank Wolfe of Cripple Creek District made a verbal statement [505] of the Money he had received from various sources on behalf of the Cripple Creek Miners and thanked the convention for what it had done through its locals.

Moved and Seconded that Bro. Ed Boyce, General Organizer, use his best endeavors to get Virginia City Miners Union to join the W. F. of M. Carried.

Moved and Seconded that this convention do now adjourn Sine die. Carried.

W. H. EDDY,
Sec.

Denver, Colo., May 19/95.

Meeting of Executive Board called to order By P. H. Clifford.

The following bill were read and allowed:

P. H. Clifford.....	39.00
Edward Boyce, Per Diem.....	70.00
Richard Thomas, Per Diem.....	50.00
John Gilligan, Per diem.....	70.00
John Calderwood, Per diem.....	64.25
W. H. Eddy for Paper ect.....	70.90
	<hr/>
	334.15
Paid Janitor of Hall.....	25.00
	<hr/>
	389.15

On Motion The Committee adjourned Sine die.

W. H. EDDY,

Clerk of Board.

Office of the W. F. of M., June 3rd, '95.

Meeting of Ex. Board called to order By Chairman
S. M. Roberts.

On Motion it was unanimously resolved that Another Special assessment of fifty cents per member on all members of the W. F. of M. be levied for to further help defray the expenses in connection with the trials of the Cripple Creek Miners.

The Next Business.

Sec. Treas made an application for an increase of Salary, Stating that as the convention had imposed more work on his office and [506] furthermore the work in connection with new locals being organized was increasing he did not feel like doing the work for one dollar and sixty six & two thirds cents a day.

It was suggested that he write all the locals, and solicit their opinions on this question the Board hav-

ing some doubt as to whether it had the power to raise the salary of the Sec Treas between conventions Sec Treas said he would carry out the suggestion in writing to all locals.

On Motion the price of constitution was raised from 4 to 5 cents each. Rituals same price as before namely \$1.00. All kinds of Cards such as Traveling Transfer & withdrawal Cards One Dollar per hundred.

Moved and seconded that the Sec. Treas procure a letter press and that he use his own judgement in regard to the price of it. Carried.

Board adjourned subject to the call of the Chairman of the board.

W. H. EDDY,

Sec. of Board.

Offices The Western of Miners. June 22nd, 1895.

Meeting of the Executive called to order by S. M. Roberts, Chairman of the Board.

Members of the Board present S. M. Roberts, Jas. Maher Richard Thomas and General Organizer Edward Boyce, who had come over from Idaho, to organize a local union at St. Louis in this State.

It was decided that Bro Boyce should go to St. Louis first, organize a union, then to Neihart, and look into the Company Store affair. Then return to Butte. Then go back to Silver City Idaho. Then to Delamar, then to Gibbons Ville.

On Motion he was allowed one hundred and fifty dollars for travelling expenses and per diem.

Board adjourned subject to the Call of the Chair.

Office of W. F. of M. June 27/95.

Meeting of Executive called to order by S. M. Roberts Chairman of the Board. Members of the Board Present. S. M. Roberts, James Maher Richard Thomas. W. H. Eddy, Secy.

The Secretary read the report of the Committee of investigation on Bro. W. J. Weeks case which was referred to the Board by the last convention of the W. F. of M. to get Bro Weeks testimony.

Bro Weeks went on and said that he wrote the letter in question and he did not think that he had done anything wrong in so doing as he was President of the Federation and he thought that according to the Preamble of the Constitution and the tenor of the resolutions adopted at the Convention of this Federation held at Salt Lake City in May 1894. That he as President had a perfect right to write the said over his signature. He gave the Board to understand that he might disclose something of how this matter came about in the first place if he had been treated right by the Colorado union after the publication of his letter. He further stated that his resignation was in the hands of the Board before the resolutions denouncing him had reached here and before his resignation was called for. He further stated to the Board that he would submit a written statement of his position.

Adjourned subject to call of the chair.

W. H. EDDY,

Sec.

Office of W. F. of M. July 5, 1895.

Meeting of the Ex. Bd. was held, President Roberts presiding.

William Seymour a Member of the Granite Came before the Meeting and made the following Statement in regard to his being at De La Mar at the time of the strike of the Miners there and had been accused of advocating that the Miners should return to work at the reduced rate of wages. [508]

William Seymour stated that he returned to Granite from De Le Mar About the latter part of November last And about the beginning of December he attended a Meeting of the Granite Miners Union and made a report about De La Mar and that his report was accepted.

He stated further that everything ran along all right until March Month when Nominations for Officers was made in the Union.

Bro. Seymour said that he received the nomination for Office of Financial Secretary.

Then one Geo. Nixon who was at Delamar said that Seymour had advocated that the Miners should return to work at the reduced wages.

This Bro. Seymour denies. He was then asked by the Board to withdraw from the office for a while, he then withdrew.

The Board then Considered the case of Bro. Seymour. And decided to exonerate him. Which they did.

The next business brought before the meeting was a communication from the Belt Mountain Miners Union which was sent to the Ex. Bd. for Publication.

After due consideration it was decided that it was not good policy at this time to publish this communication in the papers.

There being no further business the board adjourned subject to the call of the chair.

W. H. EDDY,
Secy.

Office of W. F. of M., July 16th, 1895.

Meeting of the Ex. Bd. called to order by President Roberts.

Communication from Lead City M. U. read asking for further time in which to pay their per capita tax and special Assessments On Motion They were granted further time.

Communication from Bro. Dan Caldwell, Ex. Fin. Secy. of Granite Miners Union read desiring The board to ask the Granite Miners Union [509] to send papers Notes & Etc. pertaining to his trial before a committee of the Granite M. U.

On Motion The Secy-Treas. was instructed to write The Granite Union for those papers Notes & Etc.

Adjourned subject to the call of the Chair.

W. H. EDDY,
Secy. of Board.

Office of W. F. of M., July 17, 1895.

Meeting of the Ex. Bd. Called to order by S. M. Roberts, Chairman.

Bro. Tegmier of Belt Mountain Miners Union was present to make a complete statement of his unions grievance between it and the Broad-Water Mining Company.

Bro. Tegmier made his statement.

On Motion it was decided that the Ex. Bd. would give its sympathy to the Belt Mountin Union in its Case against the aforesaid Mining Company. Adjourned.

W. H. EDDY,
Secy.

Office of W. F. of M., July 27, 1895.

Meeting of Ex. Bd. Called to order by Chairman Roberts.

Communication from Silverton Miners Union read asking permission to amalgamate with Sky City Union.

On Motion the communication was accepted. The both unions are allowed to Amalgamate.

It was also decided to send S. M. Roberts to Wardner.

W. H. EDDY,
Sec. Treas.

Office of W. F. of M., August 1, 1895.

Meeting of Ex. Bd. Called to order by Jas. Maher, communication from Sky City Miners Union read asking if they could Consolidate with Silverton Miner's Union. [510]

It was agreed that Sec. Treas. write them about the same answer to this letter as he did to Silverton.

The next question that came up was the pay of S. M. Roberts, President. He having been sent to Wallace, Idaho, in relation to the trouble there. It was agreed between the board Present that he should receive \$3.50 per and railroad fare, and that the Sec.

Treas. is hereby instructed to write Bro. Thomas Graham for his opinion on this question.

W. H. EDDY,
Sec. Treas.

Office of W. F. of M., August 10th, 1895.

Meeting of Ex. B. called to order by Chairman S. M. Roberts.

Brother S. M. Roberts read his report on the Coeur D'Alene. No action taken on it.

Moved and Seconded the Secretary Treasurer be instructed to write brother Ed. Boyce and ask him to continue at the work he is now at in behalf of the Wardner Miners and that he be paid three and half dollars (\$3.50) per day. Carried.

Bill of S. M. Roberts for 9 days Services in Coeur D'Alene at five dollars per day and Rail Road fare of twenty-five dollars and fifty-five cents (\$25.55). After some discussion it was moved that Bro. Roberts be allowed only \$3.50 per day and his Rail Road fare, Bro. Roberts not being satisfied with this action or his salary said you can look for a new President of the Western Federation of Miners.

There being no further business before the Board, it adjourned.

W. H. EDDY,
Secy. Ed. Bd.

Office of the W. F. of M. September 26th, 1895.

At a meeting of the Ex. Bd. held on the above date, the resignation of S. M. Roberts, President of the W. F. of M. was read and accepted, and Secy Treas instructed to notify James Leonard, First

(Testimony of Ernest Mills.)

Vice-President [511] At Altman, Colorado, that he is now President of the W. F. of M.

W. H. EDDY,
Secy.

Office of the W. F. of M. Oct. 19th, 1895.

At a meeting of the Ex. Bd. held on this date it was decided to Send Bro Boyce Gen Organizer, to Juneau Alaska, to organize the Miners there. And that the Secy-Treas be instructed to give Bro Boyce Two Hundred Dollars \$200.00 to pay his wages and Mileage.

W. H. EDDY. [512]

Mr. HILTON.—The purpose of this is to show who the original officers of the Federation were, the time and place of its organization, and the fact that the names of the officers, John Gilligan and W. J. Weeks, who signed the charter that has been introduced in evidence, as being the same persons, and for the purpose of contradicting or impeaching the witness Deeney.

Cross-examination by Mr. BREEN.

The WITNESS.—None of this book is in my handwriting; it was not kept by me except that it was in my custody.

(Witness excused.) [513]

**Testimony of J. C. Lowney, for Plaintiff (in
Rebuttal).**

J. C. LOWNEY, a witness called on behalf of plaintiff, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. HILTON.

The WITNESS.—My name is J. C. Lowney, and I reside in Butte, having resided here twenty-seven years. I am not a member of the defendant corporation. I am a member of the Western Federation of Miners, and have been a member of that organization since it was organized in 1893, and occupied the official position in that order of member of the executive board. I was in Butte in 1893, during the fall of that year and during the spring of that year. I was familiar with the original charter issued by the executive board of the Western Federation of Miners in convention assembled in May or June of 1893, delivered to and used by the Butte Miners' local. I saw it first hanging up in the hall on the north side of the Miners' Union Hall, and had occasion to inspect it several times as a member of that organization. I was acquainted afterwards with a new charter under date of October 3d, 1914, that was sent to the local organization. Those two instruments were identical in form, in substance. The clause was identical and alike that provided in each for the forfeiture of the property and money of the local organization in case they became defunct and went out of business. [514]

(Testimony of J. C. Lowney.)

Cross-examination by Mr. BREEN.

The WITNESS.—I said I was a member of the Butte Miners' Union in May, 1893. I am not acquainted with the fact that Charles O'Brien, a former member, now deceased, opposed having anything to do with any organization that would call for a forfeiture of any property, and that the union unanimously refused to consider to have anything to do with a central organization that would confiscate their property if they were dissatisfied with the way things went, and that it went on for some time, this discussion. I am not acquainted with that fact. I am a member of the executive board and have been since June, 1906, and have been on a salary practically ever since.

Q. What is that salary?

Mr. HILTON.—We object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

The COURT.—Overruled.

A. Four dollars a day.

The WITNESS.—It is not five dollars, and it is not two and a half for expenses. It is not a fact that I have been getting two dollars and a half for expenses. I have an expense account in every report, but it never exceeded two dollars, and went as low as thirty-four dollars a month. I examined that charter.

Q. Do you remember a convention of the Western Federation [515] of Miners in Denver, when everybody but yourself, or when you were the con-

(Testimony of J. C. Lowney.)

testing delegate, you and Mr. Duffy, and when you were seated the Butte delegation withdrew and returned to Butte? A. Yes, sir. I did not at that time examine that charter at the request of Mr. Moyer, and consult counsel to see if the union could not be suspended, and the property confiscated. I never met Mr. Moyer for two years after that. I do not know of my own knowledge of Mr. Moyer's taking such action. I know that John H. Murphy, I was informed of that matter, John H. Murphy, a Federation attorney, drew some process, which was furnished you on such matter, a general brief. I do not remember you making the answer, "Forget it" that I didn't have a chance, because you retained the brief and held onto it. This brief was about the right of general organizations to subordinate lodges, and quoted authorities throughout the country. I do not recall that Mr. Murphy's brief requested you to investigate that and see if the property could not be taken. I will state in answer to my statement that the Butte Miners' Union immediately sent another delegation to replace the delegation that bolted, and that was the next week. I don't recollect that this action that I referred to being taken by a legal representative was immediately after this bolt. I know that you were furnished a brief probably a year [516] later, some time later, by John H. Murphy. I did not see your answer; never got any answer from you that I remember.

Redirect Examination by Mr. HILTON.

The WITNESS.—During the time that counsel

(Testimony of J. C. Lowney.)

has interrogated me concerning an interview which I might have had with Mr. Moyer, Mr. Moyer was in jail.

(Witness excused.)

Mr. GEAGAN.—The complainants now rest.

Mr. BREEN.—Well, we rest too, your Honor.

We, the undersigned attorneys and counsel for the respective parties complainants and defendants, hereby submit the foregoing 270 typewritten pages as a condensed statement of the evidence given and offered at the trial of this cause, except as to immaterial typographical errors.

CANNING & GEAGAN,

O. N. HILTON,

E. P. KELLY,

Counsel for Complainants and Appellants.

PETER BREEN and

A. C. McDANIEL,

Counsel for Defendant and Respondent.

Approved:

BOURQUIN,

J.

Filed Nov. 3, 1916. Geo. W. Sproule, Clerk.
[517]

On October 30, 1916, an Assignment of Errors was filed herein as follows, to wit: [518]

*In the District Court of the United States for the
District of Montana.*

CHARLES H. MOYER, as Trustee, CHARLES H.
MOYER, ERNEST MILLS, and C. E. MA-
HONEY, as Members of the Western Feder-
ation of Miners, a Voluntary Unincorporated
Association of Persons with Its Headquarters
in the City and County of Denver, Colorado,
Complainants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Defendant.

Assignment of Errors.

Now come the complainants by their solicitors and
say:

That in the Decree heretofore entered in this cause
on the 15th day of May, 1916, the Court erred in the
following particulars:

I. The Court erred in ordering that the complain-
ants take nothing by this action.

II. The Court erred in ordering that the com-
plainants and each of them and their servants, agents,
representatives, attorneys and employees and all per-
sons acting for them or either of them or by their
authority or by the authority of either of them, or
in their behalf, or in the behalf of either of them,
or under their control, or under the control of either
of them, be enjoined and permanently restrained
and enjoined from in any manner interfering with or
asserting any claim to, or claiming any of the prop-

erty, real, personal or mixed, of the defendant.

III. That the Court erred in enjoining and restraining the Complainants from in any manner interfering with or asserting any claim to, or claiming any of the property, real, personal or mixed, of the defendant, and particularly the property described in the Complaint and Decree herein.

IV. That the Court erred in adjudging and decreeing the defendant to be the sole owner of and entitled to the possession of the property described in the Bill of Complaint, and described in the Decree herein as follows: [519]

“The south fifty (50) feet of lot numbered one (1) and the south fifty (50) feet of lot numbered (2) and the south fifty (50) feet of the east twenty-one (21) feet of lot numbered three (3) all in block numbered eleven (11) of the Butte Townsite, according to the official plat and survey thereof of record in the office of the county clerk and recorder of Silver Bow County, Montana.

A note and mortgage to secure the said note for the sum of twenty-five thousand (\$25,000.00) Dollars, given by the Lead City Miners' Union, a corporation of the state of South Dakota, to The Butte Miners Union, the defendant herein. The mortgage securing said note having been heretofore foreclosed and the property of the Lead City Miners' Union in Lead, So. Dakota, having been sold at sheriff's sale under said foreclosure, and having been bought in for and

in behalf of the said The Butte Miners' Union, the defendant herein;

All the money and certificates of deposit in the Daly Bank and Trust Company, of Butte, Montana;

Any and all books, papers, seals and other property."

V. That the Court erred in not finding that the defendant has no Estate or interest whatsoever in and to the lands and property described in the Complaint herein, and in the Decree herein.

VI. That the Court erred in not finding and ordering that the complainants were the owners of and entitled to the possession of the property described in the Bill of Complaint and in the Decree herein.

VII. That the Court erred in not finding and ordering and decreeing that the defendant turn over to, transfer to, and convey to, the Western Federation of Miners, all of the property described in the Complaint herein, and in the Decree herein.

VIII. That the Court erred in not enjoining and restraining the defendant and its agents, servants, employees and officers from asserting any claim whatsoever in and to the lands, and property described in the Bill of Complaint herein, and in the Decree herein, adverse to the complainants herein.

IX. The Court erred in admitting the following testimony of the witness, Charles Baxter:

"Q. Was this charter that was signed on or about the fifth day of October, or the one bearing date I believe of Denver, dated October 3d, was that char-

ter ever accepted by the Butte Miners' Union, a corporation, the defendant here?

Mr. GEAGAN.—We object to that as calling for a conclusion of the witness. [520]

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Never, to my knowledge."

"Q. Who presented exhibit "F" to you?

Mr. GEAGAN.—To which we object as incompetent, irrelevant and immaterial.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Guy Miller, the personal representative of C. H. Moyer.

The WITNESS.—Guy Miller is one of the members of the Executive Board. I cannot state who prepared this, and do not know of my own knowledge whether Guy Miller prepared it or not. I was in my own home when this was presented to me, and my home is on South Colorado Street, Number 2530.

I was in department two of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, when Guy Miller was on the stand and being interrogated in regard to this.

Q. Did you hear him testify at that time that he had, or admit that he had, gone to every individual whose name appears here, to solicit their signature to this?

Mr. HILTON.—I submit that would be wholly incompetent.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Q. After this there was a suit brought by Mr. Miller and others in the District Court in regard to what is set forth here, was there not?

Mr. GEAGAN.—We object to that as calling for a conclusion [521] of the witness, the best evidence being the record itself.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Yes, sir.

Q. During all of the times and since the matter was decided by the Supreme Court on the 3d day of July, last, you have been a member of the Butte Miners' Union, a corporation, defendant here, have you not?

Mr. GEAGAN.—To which we object, if your Honor please, as incompetent, irrelevant and immaterial; and on the further ground and for the further reason that there is incorporated in the question a statement which calls for a conclusion of the witness as to what was stated by the Supreme Court of the State of Montana; on the ground and for the reason that the Supreme Court of the State of Montana has never handed down any opinion or rendered an opinion as to what position they took, save and except to grant a supervisory control for the setting aside of a certain restraining order issued out of the District Court.

Which objection was by the Court overruled, to

which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I have been continuously a member in good standing since May, 1898, the last time."

"Q. Mr. Baxter, yesterday your attention was called to your signature appearing on an article here, Plaintiffs' Exhibit "F," and you were asked if you signed that article, or that document. Now, why did you sign it?

Mr. GEAGAN.—We object to that, if your Honor please, as irrelevant and immaterial, and not proper examination as to the instrument. The instrument itself shows the [522] reasons why it was signed, and those reasons it appears to state upon its face.

The COURT.—What are you offering it for?

Mr. BREEN.—I am offering it to show that upon an investigation by this witness after his signature being on there, that he found that the facts were not as represented in that document, and represented to him by Mr. Miller.

The COURT.—Well, I doubt if it is material, but if that is the purpose he may answer. The objection is overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. Mr. Miller came to me and explained the clause in the constitution of the Western Federation of Miners which had been adopted showing where the officials of the Federation had power to take charge of the affairs of the union under certain conditions, which were that there should be charges preferred

and proven against the officers, and that they should be deposed from office and a new election called. and he went on talking that way, and so I signed the thought of the way the office was being conducted, and he went on talking that way, and so I signed the petition, and he said then, after I signed it—

Mr. GEAGAN.—We object to what was said after signing it.

Which objection was by the Court sustained, to which ruling the defendant then and there asked for and was allowed an exception.

A. I have not explained why I signed it yet.

Q. Was there any other reason given by Mr. Miller than the one you have stated?

A. Yes. That we should have a fair election and elect a new set of officers afterwards, but before such an action could take place the regular election came on and [523] there was a new set of officers elected, and then the Federation still brought suit to forfeit all the property so that I didn't think then that he was sincere in his petition."

X. The Court erred in admitting in evidence the following testimony of the witness Jacob Oliver:

"Q. Mr. Oliver, prior to the Butte Miners' Union becoming a member of the local of the Western Federation of Miners, was there any argument or discussion as to what their rights, or what liabilities would be incurred by becoming a member?

A. There was considerable.

Mr. GEAGAN.—To which we object as incompetent, irrelevant and immaterial, and not within the issues of the case at bar, and that whatever discus-

sions there were, if there were such discussions, were merged in the contract as evidenced by the charter of the Western Federation of Miners to the Butte Miners' Union, a corporation, and that the same could not be contradicted by evidence relating to any discussion prior to entering into the contract, or upon any evidence not evidenced by any record, and if not shown that there was any discussion taken by the organization as a corporation.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

Q. Will you state what was done and what examination and investigation or understanding was had before the Butte Miners' Union voted to become a member of the Federation?

Mr. HILTON.—We object to that, unless the question goes farther and shows between who that understanding was had.

The COURT.—Any understanding; if there was any discussion [524] let him state the substance of it with reference to what would be the effect of joining the Federation.

Mr. BREEN.—That is what I am aiming at.

The COURT.—Let him state that. You understand, he is asking you if anything of the sort took place in the Union.

A. In the Union Hall?

Q. That is what I mean. I don't mean anything on the sidewalk.

A. There were discussions for several meetings pro and con, as to the result of the Butte Union joining

the Federation. In fact, I was one of the fellows who were opposed to the organization of the Western Federation, and I know—

Mr. GEAGAN.—I move that that statement of the witness be stricken out.

The COURT.—Denied.

A. (Continuing.) —and I know one of the points that was asked of the fellows, you might say the opposition, was this: In case of trouble in the Coeur d'Alenes, there had been trouble over there, and our union was an incorporated body and the other unions were unincorporated, or voluntary associations, and there was any property destroyed or any lives lost, would we be held liable; and we were told frankly, no; and with that understanding we practically, well, we were unanimous, finally in joining the Federation.”

“Q. And at the time that Mr. Geagan refers to in reference to this second charter they sent in October, about the fifth or twelfth of October, the discussion that you had there was—were they discussing this forfeiture clause generally, not alone Mr. Leahy, but the members generally at the time you referred to?

Mr. GEAGAN.—We object to that as leading and suggestive [525] and improper redirect examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Well, it seemed to be the general understanding there.”

XI. The Court erred in admitting in evidence the

following testimony of the witness, William E. Deeney:

“Q. Did that constitution contain any forfeiture clause, or authorize the taking of the property of any withdrawing local from the Federation?

Mr. GEAGAN.—We object to that, if your Honor please, as incompetent, for the reason that the constitution itself is the best evidence of whether it contains such a clause or not.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. No, there was no clause of the kind to my knowledge in the constitution, that is the first constitution.”

XII. The Court erred in admitting in evidence the following testimony of the witness Frank O'Connor:

“Q. Do you recall whether or not there was a provision in the constitution in use in 1893, the constitution of the Butte Miners' Union, the defendant here, providing for the payment of funeral expenses and sick benefits and the care of dependent ones of deceased members?

Mr. GEAGAN.—To which we object, if your Honor please, that the best evidence, it appearing that the witness now on the stand likely has one of the constitutions in his possession at his home, and that being the fact the instrument would be the best evidence itself.

The COURT.—He may answer now, and produce

it this afternoon, if he has one, and introduce it in evidence. Overruled. [526]

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. During the time that I have been secretary there was a standing offer that no member would have to be buried in the Potter's grave.

The WITNESS.—There was a provision in the constitution providing for a certain amount each week during sickness, and a certain amount for funeral expenses, and so on. That provision remained during the time that this Butte Miners' Union was a member of the Western Federation of Miners, after 1893, up to the 13th of June, and later there have been funeral benefits paid."

XIII. The Court erred in admitting in evidence the following testimony of the witness Pat Leahy:

"Q. Well, did you, or did the Butte Miners' Union, a corporation, receive any correspondence, or were they in any manner recognized, or receive any quarterly reports from the Western Federation of Miners, after this month of October, 1914?

Mr. GEAGAN.—We object to that as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness as to the quarterly report. And its reception or non-reception, would be immaterial to the issues in this case.

The COURT.—Overruled.

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr. O'Neill, except by lawsuits since the date of that letter?

A. No, sir.

Mr. GEAGAN.—We object to that as irrelevant and immaterial, and calling for the conclusion of the witness. [527]

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.”

XIV. The Court erred in admitting in evidence the following testimony of the witness James J. Maher:

“Q. At that time the Granite Mountain Miners’ Union owned a large hall and considerable property, did it not? A. Yes, sir.

Mr. GEAGAN.—We object to that as irrelevant and immaterial.

The COURT.—It might be a circumstance in actions of this character whether or not a forfeiture clause was in the original charter of the defendant. The objection is overruled.

To which ruling the plaintiffs then and there duly asked for and were allowed an exception.”

XV. The Court erred in admitting in evidence the following testimony of the witness Pat Lee:

“Mr. BREEN.—We now offer the document known as Defendant’s 4 for identification, and one identified by Mr. Lee, the witness on the stand, as a circular letter from Mr. Moyer.

Mr. GEAGAN.—To which we object on the ground and for the reason that the same is incompetent, irrelevant and immaterial to the issues involved at bar, the document affirmatively appearing on its face to relate to a public communication in the papers and

press; that it does not relate to any action or communication which was placed in the hands of the Western Federation of Miners, and that the same is not relevant or material or competent to bind the parties to this action in relation to the contract now before the Court for interpretation upon the evidence.

The COURT.—If the document is entitled to no weight the Court will give it none. Overruled. [528]

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

Which said document is as follows:

Independence. Education. Organization. Western Federation of Miners. Officers. Chas. H. Moyer, President, 503 Denham Building, Denver, Colorado. C. E. Mahoney, Vice-President 503 Denham Building, Denver, Colo. Ernest Mills, Secy.-Treas., 503 Denham Building, Denver Colo. John M. O'Neill, Editor, 503 Denham Building, Denver, Colo. Executive Board. J. C. Lowney, 450 N. Idaho St., Butte, Montana. Yanco Terzich, Angels Camp, California. Wm. Davidson, New Denver British Columbia. Guy E. Miller P. O. Box 300, Joplin, Missouri. Western Federation of Miners Organized May 15, 1893. Affiliated with A. F. of L. 503-511 Denham Building, Denver, Colo. SBT. & OAU. \$14,491.

December 16, 1914.

To the Officers and Members of Local Unions, Western Federation of Miners.

Dear Sirs and Brothers:—

Having noticed in the daily press of Butte City a

long and vicious article which purports to be a petition sent from Butte Union No. 1 to other locals of our Federation, this is to officially notify all locals of the Western Federation of Miners that said petition, or whatever it may be called, is not an official act of the Butte Miners' Union No. 1, of the Western Federation of Miners, but emanates from a few men who after having agreed with me in the month of June that it would be for the best interest of No. 1 that they should tender their resignations as officers-elect of the local and having done so in writing, yet in forty-eight hours after I left Butte repudiated said resignations and were installed in office, and, as good and sufficient proof will be furnished, have since that time absolutely [529] refused to cooperate with the representative of your Federation or to comply with its laws, but have in fact labored apparently with all their might to compete the job undertaken by the mobs of June 13th and 23rd, which was to absolutely destroy ever vestige of unionism in Butte City, the only difference in the methods being that they have followed the program of looting the treasury while the other applied direct action and sabotage. When stopped by the constitutional amendment to our law which was taken advantage of by many more than the ten per cent of the membership required petitioning the President of your organization to take charge of the affairs of the local, they absolutely refused to conform to the constitution and have taken this step *seeking divert* attention from their infamy by charging Federation officials with attempting to disrupt No. One. This

action was taken after your Executive Board Member Guy E. Miller, acting for the Federation in my behalf, had read the petition and notified the union that under the Federation law its affairs were under the control of the Western Federation, they therefore, being without authority to act officially for the local.

This will be a sufficient guide for our local unions until the next issue of the Miners' Magazine, when every detail of the situation will be placed before the membership by Board member Miller, who is on the ground, as well as Vice-President Mahoney and Board member Lowney. I shall, also, for the benefit of the membership and the public fully review the Butte situation in that issue of our official organ.

Fraternally yours,

[Seal]

CHARLES H. MOYER,

President.

Waste Basket.

WESTERN FEDERATION OF MINERS."

[530]

WHEREFORE: The said complainants, Charles H. Moyer, as Trustee, Charles H. Moyer, Ernest Mills, and C. E. Mahoney, as members of the Western Federation of Miners a Voluntary Unincorporated Association of Persons with its Headquarters in the City and County of Denver, Colorado, pray that the said judgment and decree of the said District Court of the United States for the District

of Montana, be reversed.

O. N. HILTON,
CANNING & GEAGAN,
E. P. KELLY,

Solicitors for Complainants. [531]

No. 33. In the District Court of the United States for the District of Montana. Charles H. Moyer, as Trustee, et al., Complainants, vs. The Butte Miners' Union, a Corporation, Defendant. Assignment of Errors. Filed Oct. 30, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. O. N. Hilton, Canning & Geagan and E. P. Kelly, Solicitors for Complainants. [532]

And thereafter on the 30th day of October, 1916, Petition for Appeal and Allowance and order granting same was filed herein, as follows, to wit:

*In the District Court of the United States, for the
District of Montana.*

CHARLES H. MOYER, as Trustee, CHARLES H. MOYER, ERNEST MILLS, and C. E. MAHONEY, as Members of the Western Federation of Miners a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,
Complainants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Defendant.

Petition for Appeal and Allowance.

The above-named complainants, Charles H. Moyer, as Trustee, Charles H. Moyer, Ernest Mills, and C. E. Mahoney, as members of the Western Federation of Miners a Voluntary Unincorporated Association of Persons with its Headquarters in the City and County of Denver, Colorado, conceiving themselves aggrieved by the Decree entered in the above-entitled court on the 15 day of May, 1916, in the above-entitled cause, do hereby appeal from said Decree to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in the "Assignment of Errors" which is filed herewith, and they pray that an Appeal be allowed, and that a Citation issue as provided by law, and that a Transcript of the records and proceedings upon which said Decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit.

And your petitioners further pray, that a proper Order touching the security to be required of them to perfect their appeal be made.

CANNING & GEAGAN,

O. N. HILTON,

P. E. GEAGAN and

E. P. KELLY,

Solicitors for Complainants.

The foregoing Petition is hereby granted, and the Appeal is hereby [533] allowed this 30 day of

Oct. 1916, and the bond on appeal is hereby fixed at the sum of Five Hundred (\$) Dollars.

BOURQUIN,

Judge of the United States District Court in and for the District of Montana.

[Endorsed]: Title of Court and Cause. Petition for Appeal and Allowance. Filed Oct. 30, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. [534]

On October 30, 1916, Bond on Appeal was filed herein, being as follows, to wit:

In the District Court of the United States, for the District of Montana.

CHARLES H. MOYER, as Trustee, CHARLES H. MOYER, ERNEST MILLS, and C. E. MAHONEY, as Members of the Western Federation of Miners a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,
Complainants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS that we, Charles H. Moyer, as Trustee, Charles H. Moyer, Ernest Mills, and C. E. Mahoney, as members of the Western Federation of Miners a Voluntary Unincorporated Association of Persons with

its Headquarters in the City and County of Denver, Colorado, as principals, and The Aetna Accident and Liability Company of Hartford, Connecticut, as security, are held and firmly bound unto the above-named, The Butte Miners' Union, a corporation in the sum of Five Hundred and 00/100 (\$500) Dollars, for the payment of which, well and truly to be made, we bind ourselves jointly and severally, and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 28 day of October, 1916.

WHEREAS the above-named complainants have prosecuted an Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse a Decree rendered and entered in the above-entitled cause in the United States District Court for the District of Montana, on the 15th day of May, 1916;

NOW THEREFORE the condition of this obligation, is such, that if the above-named complainants, Charles H. Moyer, as Trustee, Charles H. [535] Moyer, Ernest Mills, and C. E. Mahoney, as members of the Western Federation of Miners, a voluntary unincorporated Association of persons with its headquarters in the City and County of Denver, Colorado, shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them, if they fail to make good their plea, then the above obligation is to be void, otherwise to remain in full force and virtue.

It is expressly agreed by The Aetna Accident and Liability Company of Hartford, Connecticut, the

surety above-named that in case of a breach of any condition of this Bond, the Court may upon notice of not less than ten (10) days to said The Aetna Accident and Liability Company of Hartford, Connecticut, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against the said The Aetna Accident and Liability Company of Hartford, Connecticut, and award execution therefor.

CHARLES H. MOYER, as Trustee, CHARLES H. MOYER, ERNEST MILLS, and C. E. MAHONEY, as Members of the Western Federation of Miners a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado.

By P. E. GEAGAN,

CANNING & GEAGAN,

Of Counsel for Complainants. [536]

[Corporation Seal]

THE AETNA ACCIDENT & LIABILITY
COMPANY,

PAUL WALCOTT,

Resident Vice-President,

N. JORY,

Resident Assistant Secretary.

The foregoing Bond on Appeal is hereby approved
this 30 day of October, 1916.

BOURQUIN,

Judge of the Court. [537]

No. 33. In the District Court of the United States, for the District of Montana. Charles H. Moyer, as Trustee, et al., Complainants, vs. The Butte Miners' Union, a Corporation, Defendant. Bond on Appeal. Filed October 30, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. [538]

On October 30, 1916, a Citation was issued and thereafter filed herein, being as follows, to wit:

*In the District Court of the United States for the
District of Montana.*

CHARLES H. MOYER, as Trustee, CHARLES
H. MOYER, ERNEST MILLS, and C. E.
MAHONEY, as Members of the Western
Federation of Miners, a Voluntary Unincor-
porated Association of Persons With Its
Headquarters in the City and County of
Denver, Colorado,

Complainants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Defendant.

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States to, The Butte
Miners' Union, a Corporation, Defendant, and
to Peter Breen, Esq., and A. C. McDaniel, Esq.,
Its Solicitors:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit at the City of San

Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an Appeal filed in the office of the clerk of the District Court of the United States, in and for the District of Montana, wherein, Charles H. Moyer, as Trustee, Charles H. Moyer, Ernest Mills, and C. E. Mahoney, as members of the Western Federation of Miners, a voluntary unincorporated association of persons with its headquarters in the City and County of Denver, Colorado, are the appellants and The Butte Miners' Union, a corporation, as the appellee to show cause if any there be, why the Decree in said Appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable GEO. M. BOURQUIN, Judge of the United States District Court for the District of Montana, this 30th day of October, 1916, and of the [539] Independence of the United States the One Hundred and Forty-first, at the City of Butte, in the State of Montana.

GEO. M. BOURQUIN,
Judge of the United States District Court for Montana.

Service of the foregoing Citation on Appeal, acknowledged and copy thereof received this 30th day of October, A. D. 1916.

PETER BREEN,
A. C. McDANIEL,
Solicitors for Defendant. [540]

No. 33. In the District Court of the United States for the District of Montana. Charles H. Moyer, as

Trustee, et al., Complainants, vs. The Butte Miners' Union, a Corporation, Defendant. Citation on Appeal. Filed Oct. 30, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. O. N. Hilton, Canning & Geagan and E. P. Kelly, Solicitors for Complainants. [541]

On October 30, 1916, Praeceptum for Record on Appeal was filed herein, being as follows, to wit:

In the District Court of the United States, for the District of Montana.

CHARLES H. MOYER, as Trustee, CHARLES H. MOYER, ERNEST MILLS, and C. E. MAHONEY, as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,

Complainants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Defendant.

Praeceptum for Record on Appeal.

To Geo. W. Sproule, Clerk of the District Court of the United States for the District of Montana:

You will please make up a record on appeal in the above-entitled cause from the District Court of the United States for the District of Montana, to the Circuit Court of Appeals of the United States for the Ninth Circuit, and certify the same as required by law, and the rules of the above-entitled court, and the Circuit Court of Appeals of the United States

for the Ninth Circuit and incorporate in said Record on Appeal the following papers and documents to wit:

1. The Bill of Complaint of the Complainants.
2. The Answer of the Defendant.
3. A condensed form of the Testimony taken at the hearing on the trial of the above-entitled cause in the District Court of the United States for the District of Montana, in the month of February, 1916.
4. The Opinion of the Court in the above-entitled Cause.
5. The Decree made and entered in the above-entitled Cause on the 15th day of May, 1916.
6. Complainants' Assignment of Errors filed herein.
7. The Petition and Allowance of Appeal, filed herein.
8. The Bond on Appeal, filed herein. [542]
9. The Citation on Appeal filed herein.

Dated this 30th day of October, 1916.

CANNING AND GEAGAN,
O. N. HILTON,
E. P. KELLY,

Counsel for Complainants.

[Endorsed]: Title of Court and Cause. Praecipe for Record on Appeal. Filed October 30, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. O. N. Hilton, Canning & Geagan, and E. P. Kelly, Counsel for Complainants. [543]

Clerk's Certificate to Transcript of Record.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 543 pages, numbered consecutively from 1 to 543, inclusive, is a true and correct transcript of the pleadings, orders, decree, opinion of the Court, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipe of the appellant for said record on appeal, including said praecipe, and of the whole thereof, as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Two Hundred Ten 80/100 Dollars and have been paid by the appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 8th day of November, 1916.

[Seal] GEO. W. SPROULE,
Clerk United States District Court, District of Mon-
tana. [544]

[Endorsed]: No. 2875. United States Circuit Court of Appeals for the Ninth Circuit. Charles H. Moyer, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons with its Headquarters in the City and County of Denver, State of Colorado. Charles H. Moyer, C. E. Mahoney and Ernest Mills, as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons with its Headquarters in the City and County of Denver, Colorado, Appellants, vs. The Butte Miners' Union, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed November 11, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT. 2

CHARLES H. MOYER, as Trustee for the
Western Federation of Miners, a Volun-
tary Unincorporated Association of Per-
sons with its Headquarters in the City and
County of Denver, State of Colorado,
CHARLES H. MOYER, C. E. MA-
HONEY, and ERNEST MILLS as mem-
bers of the Western Federation of Miners,
a Voluntary Unincorporated Association of
Persons with its Headquarters in the City
and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corpor-
ation,

Appellee.

BRIEF OF APPELLANTS.

Filed

CANNING & GEAGAN,

O. N. HILTON,

E. P. KELLY,

FEB 5 - 1917

F. D. Monckton,

Clerk.

Solicitors and of Counsel for Appellant.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

CHARLES H. MOYER, as Trustee for the
Western Federation of Miners, a Volun-
tary Unincorporated Association of Per-
sons with its Headquarters in the City and
County of Denver, State of Colorado,
CHARLES H. MOYER, C. E. MA-
HONEY, and ERNEST MILLS as mem-
bers of the Western Federation of Miners,
a Voluntary Unincorporated Association of
Persons with its Headquarters in the City
and County of Denver, Colorado,

No.
2875

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corpor-
ation,

Appellee.

BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

This action was instituted by the complainants,
CHARLES H. MOYER, as Trustee for the Western
Federation of Miners, a Voluntary Unincorporated
Association of Persons with its headquarters in the
City and County of Denver, State of Colorado,

CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons with its Headquarters in the City and County of Denver, Colorado, and others, whose names were subsequently stricken from the Bill of Complaint before trial, against The Butte Miners' Union, a corporation, in the United States District Court, District of Montana.

In their bill of complaint, the complainants pray for a decree of the Court decreeing that the defendant has no estate or interest whatsoever in or to the lands and property described in the complaint and that the complainants be decreed to be the owners of, and entitled to the possession of the property described in the complaint, and that the defendant be ordered by the decree to perform all of the terms of the charter from the Western Federation of Miners, to the Butte Miners' Union, and turn over, transfer to, and convey to, the Western Federation of Miners, all of the property described in the complaint. And further praying that the defendant and its agents, servants, and employes and officers, be enjoined and restrained from asserting any claim whatsoever in and to the lands and property described in the complaint, adverse to the complainants. All of which property the complainants claim to be the owners of on account of the contract between the Western Federation of Miners, a voluntary unincorporated association of persons, with its

headquarters in the city and county of Denver, state of Colorado, and the defendant The Butte Miners' Union. In their bill of complaint the complainants allege their character as members of the Western Federation of Miners, a voluntary unincorporated association of persons, engaged in the work of mining, milling, smelting and reduction of ores and minerals, and in and about mines, mills, and smelters in the United States of America, the Dominion of Canada, and British Columbia; and allege that the Western Federation of Miners is divided into local unions in the different states of the United States of America, and the Dominion of Canada, and British Columbia; and that it is composed of several thousand persons engaged in working in the occupations above mentioned. And further allege, that the complainants named bring the suit as members of the Western Federation of Miners, for the benefit of all the members of the Western Federation of Miners, for the reason that it is impracticable to bring all of the members of the Western Federation of Miners before the Court as plaintiffs. They allege the corporate existence of the defendant. They then allege the application of the defendant by and through its officers, to the Western Federation of Miners on the 22nd day of September, 1914, for a charter, a copy of which application is set forth in the bill of complaint. (Tr. pp. 6 and 7.) They then allege that in accordance with the application of the defendant, the Western Federation of Miners issued a charter to the complainants, a copy of which charter is set forth in

the bill of complaint. (Tr. pp. 8 and 9.) And allege that the defendants accepted the said charter and worked under it until the 15th day of June, 1915. And that on the 15th day of June, 1915, the defendant passed a resolution withdrawing from the Western Federation of Miners, and refusing to longer affiliate with it. They then allege a demand upon the defendant, The Butte Miners' Union, for all of the property owned by it at the time of the passage of its resolution of June 15, 1915, and further allege the performance by the Western Federation of Miners of its part and portion of its contractual obligations and describe the property sought to be recovered by the complainants.

To this bill of complaint the defendant filed its answer, admitting the corporate existence of the defendant; denying the existence of the Western Federation of Miners at the time of the making of the bill of complaint, and at the time of the filing of the answer, alleged by way of explanation, that at one time the Western Federation of Miners did exist, but had ceased to exist prior to the time of making the bill of complaint. The defendant then denies that the members of the Western Federation of Miners are very numerous and that it is impracticable to bring them before the Court as plaintiffs. Denies that the plaintiffs bring the suit for the benefit of the members of the Western Federation of Miners; denies that the complainants named in the bill of complaint were at the date of the bringing of the action members of any local

of the Western Federation of Miners; and deny that they have any right or claim to the property described in the bill of complaint. The defendant then denies that it has any knowledge or information sufficient to form a belief as to the place of residence of the complainants named in the bill of complaint. The defendant then admits the application of September 22, 1914, as set forth in the bill of complaint of plaintiffs, and admits that the Western Federation of Miners did send a charter as set forth in the bill of complaint, but denies that the said charter is a re-issuance of the charter lost or destroyed which was dated May 15, 1893, and denies that the defendant accepted in any manner or at all the said charter or that it worked under the same, until June, 1915, or at all. And alleges that the defendants rejected the charter upon its arrival for the reason that it was not a re-issuance or a duplicate of the former charter. That is, the charter referred to as being dated May 15, 1893. The defendant then admits that on the 15th day of June, 1915, it passed a resolution withdrawing from the Western Federation of Miners and refusing to longer affiliate with the Western Federation of Miners. And also alleges that since the receipt of the charter set forth in plaintiffs' bill of complaint, the defendant has refused to longer affiliate with the Western Federation of Miners or to pay monthly dues thereto. The defendant then admits the demand upon it by the Western Federation of Miners for the property owned by it at the time of the passage of the resolution of June 15, 1915. The de-

fendant then denies that the Western Federation of Miners has kept and performed its obligations to be by it kept and performed as alleged in the bill of complaint, and then makes a further allegation by way of denial, that the terms of the charter were never agreed upon and denies that the Western Federation of Miners have performed any of the conditions of the original charter bearing date May 15, 1893. They admit the allegations of the bill of complaint as to the ownership of the property described in the bill of complaint as belonging to the Butte Miners' Union at the time of the passage of its resolution of June 15, 1915. Defendant then denies the existence of any contract between the complainants and the defendant, and denies that because of the existence of any such alleged contract, that all or any of the property of the defendant corporation became on the 15th day of June, 1915, or at any other date or at all, the property of the plaintiffs. And further allege that the defendant corporation was at that time and for many years passed before that time, unable by virtue of the laws of the state of Montana, to make or enter into any such contract or to bind itself, its property, or the property of its members, in any such manner or at all, or to dispose of the said property or its control in any manner or at all other than as provided by the laws of the state of Montana, or to subject itself or its members or its corporate property to the jurisdiction of an authority existing outside of, or beyond the control of the laws of the state of Montana, the state under which the de-

fendant corporation was created. The defendant then admits its refusal to turn over the property upon demand of the complainants. The defendant then sets up nine affirmative defenses in its answer. The first of which alleges that the plaintiffs and neither of them are entitled to the relief prayed for or for any relief. The second of which alleges that the defendant is not answerable to the plaintiff or any of them, and that if it is answerable to any one at all it is to the Western Federation of Miners. The third of which affirmative defenses alleges that the Butte Miners' Union is a corporation, and that it has been since the 13th day of June, 1878, a bona fide voluntary labor organization, composed of men engaged in mining, milling, smelting, and reduction of ores and minerals in and about mines, mills and smelters in the county of Silver Bow, state of Montana; and that it has during all of that time exercised jurisdiction over that class of labor in the county of Silver Bow, state of Montana, and that its corporate existence dates from the 4th day of May, 1881; and that its principal place of business is in the city of Butte, county of Silver Bow, state of Montana; and that it has complied with the law relative to becoming and perpetuating itself as a corporation; and further alleges that it has never asked to wind up its affairs and that its affairs have never been wound up, and that the corporation has never been dissolved according to the laws of the state of Montana or in any other manner; and further alleges in its affirmative defense that in compliance with its constitution and by-

laws since its organization as a voluntary association of miners and working men, it has collected monthly dues from each of its members for the purpose of transacting its business, establishing a library, caring for its sick, and burying its dead; and alleges that the plaintiffs had nothing to do with the organization of the defendant, either as an association or as a corporation; and alleges that the relations existing between the defendant and its members were voluntary. And it then further alleges in this defense, that about the latter part of the month of April, or the early part of the month of May, 1893, the defendant in conjunction with other miners' unions, located in the states of Montana, Idaho and South Dakota, called a convention composed of delegates elected by the miners' unions, to meet in the city of Butte for the purpose of creating a better understanding, and the harmonious interchange of working cards between themselves, and to create a central body composed of delegates elected from each local in attendance thereat, in proportion to the number of its members, through which communications could be received and sent, and which could arbitrate possible differences that might arise between locals composing it, or between employers and its locals; that at this convention the Western Federation of Miners was created; that the membership of the different locals of the Western Federation of Miners was and is solely voluntary; and that the federation depended for its existence upon voluntary revenue derived as per capita tax from the different locals, it having no other

income, and that on the contrary, the locals comprising the Federation can exist independent of the Western Federation of Miners, and sets forth the adoption by the Western Federation of Miners of a constitution and by-laws, a portion of which governed the conditions under which new locals could be admitted to membership, and a provision providing for the method of raising revenues. (Tr. pp. 36-37.) And then alleges in this affirmative defense, that on the 15th day of May, 1893, the defendant accepted a charter from the Western Federation of Miners, but alleges that said charter contained no clause or provision relating to the forfeiture of property or property rights, and further alleges that the defendant was without authority or power under the laws of the state of Montana to make or enter into any such contract; that there was nothing of value passed from the Western Federation of Miners to the defendant for and on account of the acceptance by the defendant of the charter from the Western Federation of Miners, to repay the defendant for the per capita tax called for under the said charter, to be paid by the defendant. It then alleges a continuance of the defendant to pay per capita tax to the Federation under its first charter from the 15th day of May, 1893, to the first day of December, 1914, along with many other allegations of the payment of different sums of money to the Western Federation of Miners.

In its fourth affirmative defense the defendant alleges the institution of suits in the month of December,

1914, against the defendant by Charles H. Moyer, one of the complainants, and other persons to obtain control of the property and affairs of the Western Federation of Miners. (Tr. pp. 46 to 50.)

Then for its fifth affirmative defense the defendant pleads that it received no consideration whatever from the Western Federation of Miners or any person for the original charter, or the pretended re-issuance of said charter, or any part of either, and there is no consideration and there was no consideration for any part of either. (Tr. p. 50.)

And in its sixth affirmative defense, it further pleads want of consideration for the following clause, to-wit: "It is agreed that should the aforesaid Union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books, and papers shall become the property of the Western Federation of Miners," contained in the re-issuance of the charter as the same is plead in the bill of complaint. And further pleads that there was no such clause or any part thereof, either in words or in substance in the original charter; and that the original charter was lost and destroyed and cannot be plead in the answer.

And for its seventh affirmative defense, pleads, that there is no provision in the constitution or by-laws of the Western Federation of Miners which is set up as "Exhibit D" in the answer of the defendant, authorizing or empowering the issuance of any charter containing the clause "It is agreed that should the aforesaid

union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books and papers shall become the property of the Western Federation of Miners," and that that clause was inserted in the pretended re-issuance of the original charter without authority.

And for its ninth affirmative defense, it pleads that that portion of the charter, to-wit: the clause, "It is agreed that should the aforesaid union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books and papers shall become the property of the Western Federation of Miners," is illegal and against public policy, and that every portion thereof contravenes the express provisions of Section 4226 of the Revised Codes of Montana of 1907, as amended by Chapter 101 of the Session Laws of 1909, of the Eleventh Legislative Assembly of the state of Montana.

And for its ninth affirmative defense, it pleads that the same clause is illegal and against public policy and that every portion thereof contravenes the express provisions of Sections 3889 and 3890 of the Revised Codes of the state of Montana of 1907. And then prays in its answer that the complainants take nothing in the action. That the defendant be decreed the sole owner of the property described in the plaintiffs' bill of complaint, and that it be further decreed that the plaintiffs and each and all of them, their agents, servants, employees, officers and all persons acting by their

direction and under their control be permanently and forever enjoined and restrained from asserting any claim in or to the lands and property of the defendant corporation, and for its costs.

The trial of the cause was had on these pleadings and upon the assumption[§] by both parties that the question as to whether or not the original charter by the Western Federation of Miners of date May 15, 1893, contained the following clause, to-wit: "It is agreed that should the aforesaid union withdraw or be dissolved, suspended or forfeit this charter, then all property, moneys, books and papers shall become the property of the Western Federation of Miners," was in issue. The complainants taking the position that the charter of 1893 contained this clause, and that the charter issued in October, 1914, a copy of which is set forth in the bill of complaint, was a re-issuance of the charter of 1893, in compliance with the request of the defendant; and that this charter contract was a binding contract as between the parties, and that the defendant by its resolution and action of June 15, 1915, had placed itself in a position by which, under its contract it should convey to the complainants all property owned by it on the 15th day of June, 1915. The defendant taking the position that the above mentioned clause relating to forfeiture of property did not exist in the original charter of May, 1893, and the further position that if it did exist, it was illegal and void as being against public policy and contrary to the express

provisions of the statutes and laws of the state of Montana, the state in which the defendant was incorporated and had its place of business, and therefore not enforceable.

THE PRINCIPAL QUESTIONS ARISING IN THE CASE ARE AS FOLLOWS:

1. Is a contract in writing such as that set forth in the bill of complaint as the charter from the Western Federation of Miners to the Butte Miners' Union, an enforceable contract as between a corporation on the one hand, and a voluntary association on the other?
2. Is such a contract void as against public policy?
3. Is such a contract void and unenforceable for the reason that one of the parties to it, that is, the defendant, The Butte Miners' Union, is a Montana corporation, limited in its scope of action and business by the following provisions of the laws of the State of Montana, to-wit: Chapter 101 of the Session Laws of 1909 of the Legislative Assembly of the state of Montana, which is as follows:

"A bill for an act to amend Sections 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of 1907, relating to Religious, Social and Benevolent Corporations, and providing that two or more Religious, Social or Benevolent Corporations may incorporate conjointly.

"Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Sections 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of Montana, 1907, respectively, be amended so as to read as follows:

“Section 4225. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

“Resolved, That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to-wit: (A., B., C., D., etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law.” The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under

the provisions of this chapter, and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation.

“Section 4226. The trustees or directors, of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions, may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state if such associations be a state, representative, supervisory, governing or ~~grant~~ organization or body, articles of incorporation, and must attach to such articles a copy of the resolution or resolutions provided for in Section 861 of the Civil Code, being Section 4225 of the Revised Code of Montana of 1907, certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of Sections 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1909."

And Sections 3889 and 3890 of the Revised Codes of the State of Montana, which read as follows, to-wit:

"3889. (§520.) Powers of corporations.—

Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.
2. To sue and be sued, in any court.
3. To make and use a common seal, and alter the same at pleasure.
4. To purchase, hold, and convey such real and personal estate as the purpose of the corporation may require.
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes, with such designation, preferences and voting powers, or restrictions as qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. (Act approved March 7, 1905, §3.)

(9th Sess. Chap. 102.)

“3890. (§521.) Limitation of powers. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers except such as are necessary to the exercise of the powers so enumerated and given.”

4. Is not the contract expressed by the charter such a contract as is made and entered into for the purpose of carrying out the aims, and business of the defendant as a corporation as shown by its articles of incorporation?

5. In as much as the complainants have entered into a contract the terms of which are expressed by the charter plead in the bill of complaint and have acted in accordance therewith, and have assumed liabilities and obligations thereunder, such as the matter of defense of suits brought against the other party to the contract, to-wit: The Butte Miners' Union, a corporation, and have allowed the members of the defendant, to transfer from it to other local unions of the Federation, and have expended money on behalf of the defendants, are they to be placed in such a position that the defendant can have received these benefits, then sever its connection with the complainants, and take with it all of its property, notwithstanding the terms of the contract upon which the complainants

rested and relied in their actions and relations with the defendant?

6. Is not the defendant in such a position that after the lapse of more than twenty (20) years of action as a member of the Western Federation of Miners under the charter contract, ~~in such a position that~~ it cannot claim that it was without power to enter into such a contract and to be bound by the same?

7. Is not the existence of the clause, "It is agreed that should the aforesaid union withdraw or be dissolved, suspended or forfeit this charter, then all property, moneys, books, and papers shall become the property of the Western Federation of Miners," in the charter of May 1893 established?

IRRELEVANT ALLEGATIONS AND CONTENTIONS.

We have presented above a brief statement of the case.

In addition to the matters properly in issue, the defendants have plead many irrelevant matters that have no bearing upon the issues of the suit, and have attempted to introduce, and have introduced some evidence relative to these matters.

We do not discuss these matters in the brief of the argument appearing hereafter, except only insofar as they relate to the specifications of error, and refer to them here only sufficiently to explain their irrelevancy to show that the defendant in this regard has been

inspired by a desire to divert attention ^{from} for the real issues of the suit, and to create a prejudice against the complainants.

The irrelevant subjects referred to, are defendants allegations as to the plaintiff amending its constitution in order to enable the Western Federation of Miners to take control of the property of The Butte Miners' Union, a corporation, and the bringing of suit by the President of the Western Federation of Miners, Charles H. Moyer, and others, against the Butte Miners' Union, in the District Court of the Second Judicial District of the State of Montana, under this amendment to the constitution, and the fact that upon a petition for a writ of Supervisory control in the Supreme Court of the State of Montana made by The Butte Miners' Union and the persons who were named defendant in the suit in the District Court, a Writ of Supervisory Control was granted by the Supreme Court of the State of Montana, ordering the District Court to set aside and annul the Writ of Injunction that it issued on the cause in that Court; and the further allegations as to the amounts contributed by The Butte Miners' Union to the Western Federation of Miners before the withdrawal of The Butte Union, and the plea of misconduct on the part of certain officials of the Western Federation of Miners toward the Western Federation of Miners.

The Amendment to the Constitution.

In 1914, the complainant, Western Federation of

Miners, amended its constitution by a referendum vote of the different locals composing the Western Federation of Miners, so as to give the President of the Western Federation of Miners power to take over the management and control of a local union of the Federation whenever it would appear upon a written petition of ten per cent. of the members of the local union in good standing, that the officers of the local union were not conducting the affairs thereof properly and were violating the provisions of the Constitution and By-Laws of the Western Federation of Miners. Under this provision of the constitution in December, 1914, upon a petition being received in writing from ten per cent. of the members in good standing of the Butte Miners' Union, the President of the Western Federation of Miners, Charles H. Moyer, attempted to take control of the affairs of the Butte Miners' Union, but was not allowed to do so by the then officers of The Butte Miners' Union, who were charged with misconduct in the written petition. That thereupon, Charles H. Moyer, and others, members of the Western Federation of Miners, and members of The Butte Miners' Union, the appellee here, brought suit against the then officers of The Butte Miners' Union, Martin Scahill, Patrick Lee, Patrick O'Neill, Mike A. Sullivan, James Ryan, James Walsh, and Patrick Quigley, to secure an injunction against them, from interfering with the President of the Western Federation of Miners in taking control of the affairs of The Butte Miners' Union, until such time as

an election of officers could be held, and its affairs placed on a business basis. An injunction was granted in the District Court in this case in favor of the complainants for the relief sought.

The Case in the Supreme Court of Montana.

After this injunction was granted in the District Court of Montana, the defendants in that suit along with The Butte Miners' Union, a corporation, which was not a defendant in the suit in the District Court, applied to the Supreme Court of the State of Montana for a writ of Supervisory Control directed to the District Court of the Second Judicial District of the State of Montana, and the Honorable John B. McClernan, Judge thereof, and upon the hearing upon this petition the Supreme Court of Montana granted the Writ of Supervisory Control and never wrote nor delivered any opinion thereon from that day to this. The date of the granting of this Writ being July, 1915. In that suit the question of ownership of the property involved in the suit now before this Court was not brought in question.

Payments Made by the Defendant to the Western Federation of Miners.

The defendants in their answer allege many thousands of dollars as having been paid out by the defendant to the Western Federation of Miners in donations, assessments, and per capita tax from 1893 to 1914. But, even if such payments were made, they were made under its contractual relations, and for the benefit of

all of the members of the Western Federation of Miners, of which organization all of the members of The Butte Miners' Union, the defendant, were members; and for the purpose of protecting the rights of the members of the Western Federation of Miners, as they themselves saw their rights as existing. So, if there was any wrongful handling of these funds it would be a matter of internal policy and a matter of accounting of the officers of the Federation to the Federation, and not a matter that would affect the relative position of the parties to this suit.

ASSESSMENT OF ERRORS.

Now come the complainants by their solicitors and say:

That in the Decree heretofore entered in this cause on the 15th day of May, 1916, the Court erred in the following particulars:

1. The Court erred in ordering that the complainants take nothing by this action.
2. The Court erred in ordering that the complainants and each of them and their servants, agents, representatives, attorneys and employes and all persons acting for them or either of them or by their authority or by the authority of either of them, or in their behalf, or in the behalf of either of them, or under their control, or under the control of either of them, be enjoined and permanently restrained and enjoined from in any manner interfering with or asserting any claim to, or

claiming any of the property, real, personal or mixed, of the defendant.

3. That the Court erred in enjoining and restraining the complainants from in any manner interfering with or asserting any claim to, or claiming any of the property, real, personal, or mixed, of the defendant, and particularly the property described in the complaint and decree herein.

4. That the Court erred in adjudging and decreeing the defendant to be the sole owner of and entitled to the possession of the property described in the Bill of Complaint, and described in the decree herein as follows:

“The south fifty (50) feet of lot numbered One (1) and the south fifty (50) feet of lot numbered Two (2) and the south fifty (50) feet of the east twenty-one (21) feet of lot numbered three (3), all in block numbered eleven (11) of the Butte Townsite, according to the official plat and survey thereof of record in the office of the county clerk and recorder of Silver Bow County, Montana.

A note and mortgage to secure the said note for the sum of twenty-five thousand (\$25,000.00) dollars, given by the Lead City Miners' Union, a corporation of the State of South Dakota, to The Butte Miners' Union, the defendant herein. The mortgage securing said note having been heretofore foreclosed and the property of the

Lead City Miners' Union in Lead, South Dakota, having been sold at Sheriff's sale under said foreclosure and having been bought in for and in behalf of the said The Butte Miners' Union, the defendant herein.

All the money and certificates of deposit in the Daly Bank and Trust Company, of Butte, Montana;

Any and all books, papers, seals and other property."

5. That the Court erred in not finding that the defendant has no estate or interest whatsoever in and to the lands and property described in the complaint herein, and in the decree herein.

6. That the Court erred in not finding and ordering that the complainants were the owners of and entitled to the possession of the property described in the Bill of Complaint and in the decree herein.

7. That the Court erred in not finding and ordering and decreeing that the defendant turn over to, transfer to, and convey to, the Western Federation of Miners, all of the property described in the complaint herein, and in the decree herein.

8. That the Court erred in not enjoining and restraining the defendant and its agents, servants, employes and officers from asserting any claim whatsoever in and to the lands, and property described in the Bill of Complaint herein, and in the decree herein, adverse to the complainants herein.

9. The Court erred in admitting the following testimony of the witness, Charles Baxter:

Q. Was this charter that was signed on or about the fifth day of October, or the one bearing date, I believe of Denver, dated October 3d, was that charter ever accepted by The Butte Miners' Union, a corporation, the defendant here?

MR. GEAGAN: We object to that as calling for a conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. "Never, to my knowledge."

Q. Who presented exhibit "F" to you?

MR. GEAGAN: To which we object as incompetent, irrelevant and immaterial.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Guy Miller, the personal representative of C. H. Moyer.

THE WITNESS: Guy Miller is one of the members of the Executive Board. I cannot state who prepared this, and do not know of my own knowledge whether Guy Miller prepared it or not. I was in my own home when this was presented to me, and my home is on South Colorado street, number 2530.

I was in Department Two of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, when Guy Miller was on the stand and being interrogated in regard to this.

Q. Did you hear him testify at that time that he had, or admit that he had, gone to every individual whose name appears here, to solicit their signature to this?

MR. HILTON: I submit that would be wholly incompetent.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Q. After this there was a suit brought by Mr. Miller and others in the District Court in regard to what it set forth here, was there not?

MR. GEAGAN: We object to that as calling for a conclusion of the witness, the best evidence being the record itself.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Yes, sir.

Q. During all of the times and since the matter was decided by the Supreme Court on the 3d day of July, last, you have been a member of the Butte Min-

ers' Union, a corporation, defendant here, have you not?

MR. GEAGAN: To which we object, if your Honor please, as incompetent, irrelevant and immaterial; and on the further ground and for the further reason that there is incorporated in the question a statement which calls for a conclusion of the witness as to what was stated by the Supreme Court of the State of Montana; on the ground and for the reason that the Supreme Court of the State of Montana has never handed down any opinion or rendered an opinion as to what position they took, save and except to grant a supervisory control for the setting aside of a certain restraining order issued out of the District Court.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I have been continuously a member in good standing since May, 1898, the last time.

Q. Mr. Baxter, yesterday your attention was called to your signature appearing on an article herein, Plaintiffs' Exhibit "F," and you were asked if you signed that article, or that document. Now why did you sign it?

MR. GEAGAN: We object to that, if your Honor please, as irrelevant and immaterial, and not proper examination as to the instrument. The instrument itself shows the reasons why it was signed, and those

reasons it appears to appear to state upon its face.

THE COURT: What are you offering it for?

MR. BREEN: I am offering it to show that upon an investigation by this witness after his signature being on there, that he found that the facts were not as represented in that document, and represented to him by Mr. Miller.

THE COURT: Well, I doubt if it is material, but if that is the purpose he may answer. The objection is overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. Mr. Miller came to me and explained the clause in the constitution of the Western Federation of Miners, which had been adopted showing where the officials of the Federation had power to take charge of the affairs of the union under certain conditions, which were that there should be charges preferred and proven against the officers, and that they should be disposed from office and a new election called and he went on talking that way, and so I signed the thought of the way the office was being conducted, and he went on talking that way, and so I signed the petition, and he said then, after I signed it—

MR. GEAGAN: We object to what was said after signing it.

Which objection was by the Court sustained, to which ruling the defendant then and there asked for

and was allowed an exception.

A. I have not explained why I signed it yet.

Q. Was there any other reason given by Mr. Miller than the one you have stated?

A. Yes. That we should have a fair election and elect a new set of officers afterwards, but before such an action could take place the regular election came on and there was a new set of officers elected, and then the Federation still brought suit to forfeit all the property so that I didn't think then that he was sincere in his petition.

X. The Court erred in admitting in evidence the following testimony of the witness Jacob Oliver:

Q. Mr. Oliver, prior to The Butte Miners' Union becoming a member of the local of the Western Federation of Miners, was there any argument or discussion as to what their rights, or what liabilities would be incurred by becoming a member?

A. There was considerable.

MR. GEAGAN: To which we object as incompetent, irrelevant and immaterial, and not within the issues of the case at bar, and that whatever discussions there were, if there were such discussions, were merged in the contract as evidenced by the charter of the Western Federation of Miners to The Butte Miners' Union, a corporation, and that the same could not be contradicted by evidence relating to any discussion prior to entering into the contract, or upon any evidence not

evidenced by any record, and if not shown that there was any discussion taken by the organization as a corporation.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

Q. Will you state what was done and what examination and investigation or understanding was had before The Butte Miners' Union voted to become a member of the Federation?

MR. HILTON: We object to that, unless the question goes farther and shows between who that understanding was had.

THE COURT: Any understanding; if there was any discussion let him state the substance of it with reference to what would be the effect of joining the Federation.

MR. BREEN: That is what I am aiming at.

THE COURT: Let him state that. You understand, he is asking you if anything of the sort took place in the Union.

A. In the Union Hall?

Q. That is what I mean. I don't mean anything on the sidewalk.

A. There were discussions for several meetings pro and con, as to the result of The Butte Union joining the Federation. In fact, I was one of the fellows

who were opposed to the organization of the Western Federation and I know—

MR. GEAGAN: I move that that statement of the witness be stricken out.

THE COURT: Denied.

A. (Continuing)—and I know one of the points that was asked of the fellows, you might say the opposition, was this: In case of trouble in the Coeur d'Alenes, there had been trouble over there, and our union was an incorporated body and the other unions were unincorporated, or voluntary associations, and there was any property destroyed or any lives lost, would we be held liable; and we were told frankly, no; and with that understanding we practically, well, we were unanimous, finally in joining the Federation.

Q. And at the time that Mr. Geagan refers to in reference to this second charter they sent in October, about the fifth or twelfth of October, the discussion that you had there was—were they discussing this forfeiture clause generally, not alone Mr. Leahy, but the members generally at the time you referred to?

MR. GEAGAN: We object to that as leading and suggestive and improper redirect examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked and were allowed an exception.

A. Well, it seemed to be the general understanding there.

11. The Court erred in admitting in evidence the following testimony of the witness, William E. Deeney:

Q. Did that constitution contain any forfeiture clause, or authorize the taking of the property of any withdrawing local from the Federation?

MR. GEAGAN: We object to that, if your Honor please, as incompetent, for the reason that the constitution itself is the best evidence of whether it contains such a clause or not.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. No, there was no clause of the kind to my knowledge in the constitution, that is the first constitution..

12. The Court erred in admitting in evidence the following testimony of the witness Frank O'Connor:

Q. Do you recall whether or not there was a provision in the constitution in use in 1893, the constitution of The Butte Miners' Union, the defendant here, providing for the payment of funeral expenses and sick benefits and the care of dependent ones of deceased members?

MR. GEAGAN: To which we object, if your Honor please, that the best evidence, it appearing that the witness now on the stand likely has one of the constitutions in his possession at his home, and that

being the fact the instrument would be the best evidence itself.

THE COURT: He may answer now, and produce it this afternoon, if he has one, and introduce it in evidence. Overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. During the time that I have been secretary there was a standing offer that no member would have to be buried in the potter's grave.

THE WITNESS: There was a provision in the constitution providing for a certain amount each week during sickness, and a certain amount for funeral expenses, and so on. That provision remained during the time that this Butte Miners' Union was a member of the Western Federation of Miners, after 1893, up to the 13th of June, and later there have been funeral benefits paid.

13. The court erred in admitting in evidence the following testimony of the witness Pat Leahy:

Q. Well, did you, or did the Butte Miners' Union, a corporation, receive any correspondence, or were they in any manner recognized, or receive any quarterly reports from the Western Federation of Miners, after this month of October, 1914?

MR. GEAGAN: We object to that as incompetent, irrelevant and immaterial, and calling for a con-

clusion of the witness as to the quarterly report. And its reception or non-reception, would be immaterial to the issues in this case.

THE COURT: Overruled.

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr. O'Neill, except by law suits since the date of that letter?

A. No, sir.

MR. GEAGAN: We object to that as irrelevant and immaterial, and calling for the conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

14. The court erred in admitting in evidence the following testimony of the witness, James J. Maher:

Q. At that time the Granite Mountain Miners' Union owned a large hall and considerable property, did it not?

A. Yes, sir.

MR. GEAGAN: We object to that as irrelevant and immaterial.

THE COURT: It might be a circumstance in actions of this character whether or not a forfeiture clause was in the original charter of the defendant. The objection is overruled.

To which ruling the plaintiffs then and there duly asked for and were allowed an exception.

15. The Court erred in admitting in evidence the following testimony of the witness Pat Lee:

MR. BREEN: We now offer the document known as Defendant's 4 for identification, and one identified by Mr. Lee, the witness on the stand, as a circular letter from Mr. Moyer.

MR. GEAGAN: To which we object on the ground and for the reason that the same is incompetent, irrelevant and immaterial to the issues involved at bar, the document affirmatively appearing on its face to relate to a public communication in the papers and press; that it does not relate to any action or communication which was placed in the hands of the Western Federation of Miners, and that the same is not relevant or material or competent to bind the parties to this action in relation to the contract now before the Court for interpretation upon the evidence.

THE COURT: If the document is entitled to no weight the Court will give it none. Overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

Which said document is as follows:

Independence, Education, Organization. Western Federation of Miners. Officers: Chas. H. Moyer, president, 503 Denham Building, Denver, Colorado;

C. E. Mahoney, Vice-President, 503 Denham Building, Denver, Colo.; Ernest Mills, Secy-Treas., 503 Denham Building, Denver, Colo.; John M. O'Neill, Editor, 503 Denham Building, Denver, Colo. Executive Board: J. C. Lowney, 450 N. Idaho St., Butte, Montana; Yanco Terzich, Angeles Camp, California; Wm. Davidson, New Denver, British Columbia; Guy E. Miller, P. O. box 300, Joplin, Missouri. Western Federation of Miners, Organized May 15, 1893. Affiliated with A. F. of L., 503-11 Denham Building, Denver, Colo. SBT. & OAU \$14,491.

December 15, 1914.

To the Officers and Members of Local Unions, Western Federation of Miners.

Dear Sirs and Brothers:—Having noticed in the daily press of Butte City a long and vicious article which purports to be a petition sent from Butte Union No. 1 to other locals of our Federation, this is to officially notify all locals of the Western Federation of Miners that said petition, or whatever it may be called, is not an official act of the Butte Miners' Union No. 1, of the Western Federation of Miners, but emanates from a few men who, after having agreed with me in the month of June that it would be for the best interest of No. 1 that they should tender their resignations as officers elect of the local and having done so in writing, yet in forty-eight hours after I left Butte repudiated said resignations and were installed in office, and, as good and sufficient proof will be furnished, have since

that time absolutely refused to co-operate with the representative of your Federation or to comply with its laws, but have in fact labored apparently with all their might to complete the job undertaken by the mobs of June 13th and 23rd, which was to absolutely destroy every vestige of unionism in Butte City, the only difference in the methods being that they have followed the program of looting the treasury while the other applied direct action and sabotage. When stopped by the constitutional amendment to our law which was taken advantage of by many more than the ten per cent. of the membership required petitioning the President of your organization to take charge of the affairs of the local, they absolutely refused to conform to the constitution and have taken this step seeking to divert attention from their infamy by charging Federation officials with attempting to disrupt No. One. This action was taken after your Executive Board Member Guy E. Miller, acting for the Federation in my behalf, had read the petition and notified the union that under the Federation law its affairs were under the control of the Western Federation, they therefore, being without authority to act officially for the local.

This will be sufficient guide for our local unions until the next issue of the Miners' Magazine, when every detail of the situation will be placed before the membership by Board Member Miller, who is on the ground, as well as Vice-President Mahoney and Board Member Lowney. I shall, also, for the benefit of the

membership and the public fully review the Butte situation in the issue of our official organ.

Fraternally yours,

(Seal).

CHARLES H. MOYER,

Western Federation of Miners.

President.

BRIEF OF ARGUMENT.

We will attempt to dispose of the matters in controversy here in the order in which the Court below seems to have considered and disposed of them according to its opinion. (Tr. p. 296.)

There can be no question as to the right of the complainants to maintain this action on behalf of themselves and the other members of the Western Federation of Miners, for when the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the Court, one or more may sue or defend for the whole. Part of the above language is the exact language of Rule 38 of the Equity Rules for the Courts of Equity in the United States, which became effective on the first day of February, 1913, and the same question has been passed upon in *Smith vs. Swormstedt*, 18 Howard 228; *Bacon vs. Robertson*, 18 Howard, 480.

The allegations of the Bill of Complaint show that the complainant Western Federation of Miners, is a voluntary organization or association of persons, and

that they are very numerous, being several thousand in number, scattered through different parts of the United States, the Dominion of Canada, and British Columbia, and that it is impracticable to bring them before the Court as plaintiffs. (Tr. pp. 4 and 5). And the testimony in the case, which is uncontradicted, shows in one place that the membership was approximately Eleven Thousand. This according to the testimony of the Witness Charles E. Mahoney. (Tr. p. 307). Then again according to the testimony of the witness, Ernest Mills: The membership consists of several thousand. (Tr. p. 309). So, that all of the facts necessary to bring the case within the Rules of Equity of the United States Courts, and the law as laid down by the Supreme Court of the United States in the above cited cases, has been complied with.

The first question that presents itself to us in the matter of discussing this case here as in the Court below, after the question of jurisdiction is the question as to whether or not a contract in writing such as the one which is plead in complainants' Bill of Complaint as the application for a charter (Tr. pp. 6 and 7) and the charter issued by the complainants upon the receipt of this application (Tr. pp. 8 and 9) is one that can be enforced according to its terms upon the happening of the event of the withdrawal of the applicant, the one to whom the charter was granted.

The application for the charter is made by the corporation by and through its officers acting, as the

application shows on its face, by authority of a resolution directing and instructing its President, Secretary and Board of Directors or Trustees to apply for a re-issuance of a charter.

In this portion of the brief we are discussing the question in the light that it is assumed that there is no controversy as to the charter being a re-issuance of the charter formerly in possession of the applicant. And further assuming that there is no particular or specific provision of the Laws of the State of Montana, preventing this particular corporation defendant from contracting as other corporations.

The Western Federation of Miners is, of course, a voluntary unincorporated association of persons and is therefore a different individuality, if an individuality it can be called before the law, than is the artificial creature, the corporation.

The persons who are members of the corporation are engaged in the same general line of business and occupation as are the members as a whole, of the voluntary association, of which the corporation was one of the units, or locals. There is no denial of this fact, either in the pleading or the evidence. And the pleading affirmatively shows that they were both engaged in the same line of business. Consequently their interest must be and should be identical as affecting the membership in their chosen calling or profession.

A somewhat similar situation to the one presented

in this portion of the arugument arose in the State of New York, and finally got into the Courts of New York, and is reported in the New York Reports under the title, McCord vs. Thompson-Starrett Co., et al., in 112 N. Y. Supplement at page 902, and in 113 N. Y. Supplement at page 385. Upon the hearing of this case in the Appellate Court of New York, that Court speaking of the power of contract in that particular case stated as follows: "The plea that it was beyond the corporate powers of the Thompson-Starrett Co., to vest in an outside body the right to bind it by the regulations adopted by the Board of Governors, merits scant recognition. The agreement with the plaintiff association had reference to the business which by its charter the defendant was authorized to conduct. It was designed to facilitate it in its business operations, and to prevent a repetition of the ruinous and hazardous situations with which it has been confronted, just prior to the time that it became a member of the association. The act of becoming a member, being in itself a lawful one and directly related to its corporate powers. It seems clear that it did not transcend its powers when it subscribed to the constitution of the association." (112 N. Y. Supplement 902). This cause was afterward on appeal to the Supreme Court, appellate division, reversed, but not upon the proposition above quoted. For the Supreme Court in its opinion in the case, said through Justice Scott, "We find no difficulty in affirming this judgment, if the building trades and employers association had gone

no farther than to order a general lock-out of the members of the Brotherhood of Carpenters." But they held in this appeal that the order made by the building trades and employers association was void and could not be enforced against a member for the reason that it went beyond the powers of the association and the agreement of the members of the association.

In the case at bar, there is no claim that the association went beyond its powers as an association in its demand for performance of duties by the defendant prior to its withdrawal. The corporation, defendant, agreed to accept and be governed by the constitution, by-laws and regulations of the association, Western Federation of Miners. And further agreed that in the event that it should withdraw from the Western Federation of Miners, or be dissolved, suspended or forfeit the charter, then all property, monies, books, and papers, should become the property of the Western Federation of Miners. This portion relating to the property agreement, is undoubtedly as much an inducement for entering into the contract as the agreement to be bound by the by-laws and constitution of the association. And in this connection it is well to remember that neither the corporation nor the association are business enterprises, as the term business enterprise is commonly known and understood. That is, they are not enterprises instituted and maintained for the purpose of profit upon capital invested. They both having in view the protection of the rights

of their members as laborers in certain occupations in the selling of their labor and the maintaining of fit and proper conditions surrounding the execution of their labor, such as wages, hours of employment and sanitary and social conditions.

There is nothing in the contract that is in itself illegal or that involves moral turpitude. Consequently it is such a contract as may be brought into a Court of Law or Equity to be enforced, upon the failure of one of the parties to comply with its terms when the event entitling the other party to performance has transpired.

Where a contract is not in itself beyond the powers of a corporation it is presumed that the corporation has power to make the contract.

Choctaw, etc. R. R. vs. Bond, 160 Fed., 403.

Cooke on Corporations, Vol. 3, Sec. 681, p. 2230.

A contract of a corporation is binding if it is not expressly prohibited and if it has, "a natural and reasonable tendency to aid in the accomplishment of the objects for which the corporation was created."

Colorado etc. Co. vs. American etc. Co., 97 Fed., 483.

Is Such a Contract Void and Against Public Policy?

In this connection we are discussing such a contract as the one expressed by the application of the

corporation for the re-issuance of a charter and the charter issued in response thereto. There is nothing expressed in the contract that in any way tends to injure the rights of the public in general as apart from the corporation and association. It is not such a contract as tends to foster any imposition upon the public, nor tends to prevent the conducting of the proper functions of public officers in the protection of the life, property, peace, quiet, and health, of the community or of the nation; nor is there anything apparent in the contract that contravenes any established law or policy of the state that incorporated the corporation, the state in which the contract is to be performed, for the laws of that state, which is the State of Montana, relating to corporations such as the defendant here, provide in Sec. 4226 of the Revised Codes of Montana, as amended by Chap. 101 of the Session Laws of 1909 of the Legislative Assembly of the State of Montana, among other things, that such corporations organized in pursuance to that provision: "May have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law, and enforce the same by proper penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise, or bequest, personal or real estate, and may use and dispose thereof only for the purposes for which the corporation is organized."

And one of the purposes, and in fact the principal

purpose for which this corporation defendant was organized, is expressed in its articles of incorporation as follows:

To protect the interests of the membership of said association and to enable it to hold such property as may be necessary for the promotion of its good and the advancement of the interests of the same.” (Trans. p. 450).

And since these same articles of incorporation state that Miners’ Union—the original incorporation—was composed of Miners and others (Trans. p. 450) and the association with which it contracted was likewise composed of miners and other persons engaged in the same general line of employment and was organized for the purpose as stated in the preamble of its constitution as adopted at its organization—

“Since there is scarcely any fact better known than that civilization has for centuries progressed in proportion to the production and utilization of the metals, precious and base, and most of the comforts enjoyed by the great majority of mankind are due to this progress, the men engaged in the hazardous and unhealthy occupation of mining should receive a fair compensation for their labor, and such protection from the law as will remove needless risk to life and health; we therefore deem it necessary to organize the Western Federation of Miners of America for the pur-

pose of securing by education and organization a wise legislation and just compensation for our labor and the right to use our earnings free from dictation by any persons whatsoever. We therefore declare our objects to be:

“First. To secure an earning fully compatible with the dangers of our employment.

“Second. To establish as speedily as possible and forever our right to receive pay for labor performed in lawful money, and to rid ourselves of the iniquitous system of spending our earnings where and how our employers or their officers may designate.

“Third. To procure the introduction and use of any and all suitable, efficient appliances for the preservation of life, health and limbs of all employes, and thereby preserve to society the lives of large numbers of wealth producers annually.

“Fourth. To labor for the enactment of suitable mining laws, with a sufficient number of inspectors, who shall be practically miners, for the proper enforcement of such laws.

“Fifth. To provide for the education of our children by lawfully prohibiting their employment until they shall have obtained a satisfactory education, and in every case until they shall have reached sixteen years of age.

“Sixth. To prevent by law any mine owner or mining company from employing any Pinkerton detective or other armed forces from taking possession of any mine, except the lawfully elected and appointed officers of the state, who shall be *bona fide* citizens of the county and state.

“Seventh. To use all honorable means to maintain friendly relations between ourselves and our employers, and endeavor by arbitration or conciliation to settle such differences as may arise between us, and thus make strikes unnecessary.

“Eighth. To use all lawful and honorable means to abolish the system of contract convict labor in states where it now exists and to (446) demand the enforcement of the foreign contract labor law and protection of our American miners and mechanics against imported pauper labor.

“Ninth. To demand the repeal of all conspiracy laws that in any way abridge the rights of labor organizations.

“Tenth. To procure employment for our members in preference to non-union men.”

(Trans. pp. 485-486-487). —

There was no departure from the objects of the corporation which in themselves were and are lawful. And in this connection and relating to this portion of the argument it is well to remember that the defendant corporation through, first, by its invitation to other

unions and second, by its participation in the general convention by and through its delegates, assisted in bringing about the organization of this very federation of which it became a part; and that two of its own members were members of the committee of five that were appointed to draft a charter and ritual for the use of the Western Federation of Miners, these two members being Bart Maloy and Wm. Cunningham (Trans. p. 496); So, that we can see nothing against public policy in the contract.

Is Such a Contract Unenforceable for the Reason That One of the Parties to It Is a Montana Corporation Limited in Its Scope of Action in Business ~~for~~ the Laws of the State of Montana?

The limitations placed upon this corporation defendant, the appellee here, by the laws of the State of Montana, the State of its incorporation, are such as re-imposed by Sections 4225 and 4226 of the Revised Codes of Montana as amended by Chap. 101 of the Session Laws of 1909 of the Legislative Assembly of the State of Montana, which sections, as amended, read as follows:

“Section 4225. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

‘Resolved, That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to-wit: (A., B., C., D., etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for the purpose to file with the proper officer articles of incorporation as required by law.” The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under the provisions of this chapter and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation.”

“Section 4226. The trustees or directors of

whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state if such associations be a state, representative supervisory, governing or grand organization or body, articles of incorporation, and must attach to such articles a copy of the resolution or resolutions provided for in Section 861 of the Civil Code, being Section 4225 of the Revised Code of Montana of 1907, certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of Section 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate

penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1909.

And Sections 3889 and 3890 of the Revised Codes of the State of Montana are read as follows:

“3889. (§520) Powers of Corporations. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

2. To sue and be sued, in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes, with such designation, preferences and voting powers, or restrictions as qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. (Act approved

March 7, 1905, 3) (9th Sess., Chap. 102).

“3890. (§521) Limitation of powers. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.”

Such corporations as The Butte Miners' Union have great powers as to how they may take property both real and personal, and the only limitation placed upon them is that they use and dispose of that property only for the purposes for which the corporation is organized. This limitation is placed by Section 4226, *supra*, as amended, and by sub-section 7 of Sec. 3889 of the Revised Codes of Montana, as the same is set forth, *supra*, which enables it to enter into any obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation; and according to the powers given to all corporations under the Laws of the State of Montana and expressed by Section ~~3890~~³⁸⁹⁰, *supra*, it has power to do all acts necessary to carry into effect the powers given to corporations under the laws of the State of Montana.

Taking into consideration again the purposes for which this defendant corporation was incorporated, as expressed in its Articles of Incorporation (Trans. p. 450) and the class of persons of whom the member-

ship of this corporation was and is composed, can it be said that its becoming a member of the Western Federation of Miners and contracting with it and accepting a charter from it was not an act done to protect the interests of the membership of the corporation and for the advancement and promotion of the good of the membership since the association of which it became a part was one whose objects and aims were the mental, physical and social betterment of the class of persons constituting the membership of the defendant corporation, which was the same as the membership of the general organization? These purposes and aims are referred to and set forth in the last subdivision of this argument above. This same corporation defendant took particular pains in the eighth section of its Articles of Incorporation, to provide for changes which read as follows:

“Said corporation shall be subject to such rules and regulations as it may now have for its government or may hereafter enact provided they are not contrary to these Articles of Incorporation (Trans. p. 452).”

And they did afterward, through becoming a member of the Western Federation of Miners, adopt new rules and regulations for the conduct of the affairs of the corporation when they became a portion of the Western Federation of Miners (Trans. pp. 487 to 496).

There is no expressed provision in these laws

prohibiting this corporation defendant from making such a contract as that evidenced by the application and charter so long as the contract is made with one or with many whose interests are the same as that of the corporation and who would have, under the contract, a tendency to aid in the accomplishment of the objects for which the corporation was created.

Choctaw etc. R. R. v. Bond, Supra.

Colorado etc. Co. v. American Co., Supra.

Cook on Corporations, Vol. 3, Sec. 681, p. 2230.

So that we can find no limitations, either express or implied, placed upon the defendant corporation which prevent it from entering into such a contract, as the one in controversy here, in the Laws of the State of Montana, the state in which it was incorporated and in which the contract was entered into.

The proposition covered by the fourth question in the case has been practically covered in the discussion of the three preceding questions, and we believe is thereby shown to exist as contended for by these appellants.

The Purpose of the Corporation.

The defendant corporation, as is shown by the evidence and pleadings in this case, was a corporation at the time of the organization of the Western Federation of Miners. The Western Federation of Miners was organized in the Miners' Union Hall in Butte,

Montana, and the call for the convention at which this Federation was organized was made by The Butte Miners' Union, the appellee herein. (Trans. p. 332). The corporation defendant was one of the movers, in fact, the prime movant in bringing about the organization of the Western Federation of Miners, and became the first local of the Western Federation of Miners, and was designated as No. 1 of the Western Federation of Miners (Trans. p. 515), and two of its own members were members of the committee that drafted the form of charter and the ritual for the society (Trans. p. 496). It caused others to enter into contracts of like nature with the Federation by which it could benefit through their failure to perform in accordance with the provisions of their charters, and received all the benefit of this. The members of the corporation were at that time very capable of judging of what the purpose and objects of the corporation were. Is such a corporation to be allowed to enter into relations of a contractual nature with others and continue to receive the benefits of these relations for more than twenty years and then, without so much as offering to even partially perform its contract, to take with it all which it has agreed to deliver to the other parties upon the happening of a certain event when that event has transpired? In this respect it has been said that a society which has received the benefit of a contract may be estopped to raise the offense of ultra vires.

Wood v. Supreme Rule Etc., 212 Ill., 522.

Con v. Heilman, 241 Penn. p. 374.

Cooke on Corporations, 7th Ed. Vol. 3, Sec. 681, p. 2239.

And in connection with ultra vires acts of corporations upon which the defendant corporation in this suit seems to want to rest, it has been well stated, we take it, by that learned author, Wm. W. Cooke, in his work on corporations, 7th Ed., Vol. 3, p. 2239, after reviewing a great number of cases on ultra vires contentions by an organized corporation, as follows:

“Out of the various cases set forth in this chapter a few general rules may be drawn and stated.

“First, there is no clearly defined principle of laws that determines whether a particular act is ultra vires or intra vires. The courts are becoming more liberal and many acts which fifty years ago would have been held to be ultra vires would be held to be intra vires. The courts have greatly enlarged the implied powers of ordinary corporations until now such corporations may do almost anything that an individual may do, provided the state and the stockholders and creditors do not object. In the case of railroads the courts are more strict. The public are interested in the acts and operations of railroads. Hence, ordinarily, the courts will not sustain the acts of railroads in selling, leasing, or mortgaging their

property or engaging in any outside business unless the public assent through the legislature, but as to the ordinary private corporations the rules of *ultra vires* have been greatly relaxed.

“Second, the decision in any particular case turns largely on the question of who is the complainant; against whom the complaint is made; and what relief is sought. The stockholder’s action is looked upon most favorably if he is not guilty of delay. But an action by the state to enjoin the act or to forfeit franchises is an unusual, extraordinary and somewhat harsh remedy, and is not favored by the courts. So, also, in an action by the corporation itself or by the party contracted with to repudiate an *ultra vires* act is not favored by the courts. Such an action is an attempt by a party to evade its contracts by means of the principles of law which both parties have violated or waived the benefit of. The court is not swift to grant the relief in such cases.

“Third, if a contract or act is *ultra vires*, and has not yet been performed, either the corporation or the party contracted with may refuse to complete the contract. No damages can be collected for such refusal. So, also, if the contract has been partly performed, and the unperformed part is separable from the rest, either party may refuse to complete. But where one party has completely performed and carried out this part of the contract the other party cannot refuse to perform, while at

the same time retaining the benefits of performance by the first named party."

The Clause, "It Is Agreed That Should the Aforesaid Union Withdraw, or Be Dissolved, ^{rescinded} Sustained, or Forfeit Its Charter, Then All Property, Moneys, Books and Papers Shall Become the Property of The Western Federation of Miners," in the Charter of May, 1893.

Noticing that the Court below after concluding that such a contract as the one herein in controversy was ultra vires and non-enforceable further proceeded to deliver its opinion as to the weight of the testimony with regard to whether or not the clause above set forth existed in the charter of May, 1893, to The Butte Miners' Union from the Western Federation of Miners, ~~We~~ ^{and} have closely examined this testimony and are not of the same opinion ^{as} ~~of~~ the Court below and do not believe that this Court, upon an examination of this testimony, will reach the same conclusion as the Court below. It is very easy for us to see how the Court below fell into this error; for taking the Court's own opinion (Trans. p. 296) (pp. 301-302), the Court stated that it is supported by the testimony of both parties that the charter of 1893 was not a duplicate of other charters then issued, but contained an honor roll of certain of defendant's members, which differentiates it from the other charters, and of which the Aspen Charter, issued amongst the first, is in evidence.

William W. Walsh, one of the former members of the Federation and one of its early officers, testified as to how the names of T. J. McLennan, Stephen Nicholas, Wm. Cunningham, Bart Maloy, J. T. Poynton, came to be printed on the bottom of the first charter, for he states, after having stated that he knew all of these men, that they were the committee of officers of the first officers of the Western Federation of Miners and that is how their names come to be on the bottom of the charter (Trans. p. 335). And this is corroborated by other evidence—the minutes, (Trans. p. 496).

And the witness James J. Maher, on cross-examination, being examined as to whether or not he, as an officer of the Western Federation of Miners, had issued a charter with the names above mentioned thereon, states that he had not for the reason that before the 1894 convention these names were taken off, and at the 1896 convention the word "America" was taken off, but in all other respects the charter was never changed (Trans. p. 341). This testimony was given with relation to plaintiffs' Exhibit "D," which is the charter from the Western Federation of Miners to Aspen Miners' Union No. 6 (Trans. pp. 334-335). This same witness, James J. Maher, further testified under cross-examination that the original charter issued to The Butte Miners' Union No. 1 by the Western Federation of Miners was identical with the Aspen charter (Trans. p. 341).

The witness Patrick Meaney, who was a resident of Butte for thirty-seven years and who became an active member of Butte Miners' Union in April, 1895, and contributed to the first money that was raised to build the present Miners' Union Hall in 1881, stated: "I was acquainted with the original charter that was issued to The Butte Miners' Union by the Western Federation of Miners in 1893, and saw it there hanging up on the wall all the time after and numerous times after that. I read it. There was a clause in the original charter as originally issued to The Butte Miners' Union providing that in the event of withdrawal, or suspension, or for other causes named therein, there was to be a change of the ownership of property or that the property was to become the property of the Western Federation of Miners. In the old charter of The Butte Miners' Union there was such a provision that if the charter should be revoked or if the union should withdraw or be suspended from the Western Federation of Miners, and that was the general understanding when the Western Federation of Miners was formed. That provision was in the original charter that I saw in The Butte Miners' Union Hall—the one that was issued in 1893 (Trans. pp. 475-476). I went to The Butte Miners' Union Hall and saw the charter the day it was hung up or the day after, I don't recall the date; it was after it was hung up. I was President of the Workingmen's Union and I was Secretary of the Labor Temple and that occupied three nights out

of each week during several years, and I had access to all of the charters, and I read all of them, and made it my business to read them. When this charter was hung up it was framed and had a glass front. I don't recall any drapery being on it. This charter which was hanging up contained five names: Joe Boynton, Bill Cunningham, but the others I cannot recall. There was John Gilligan, President, and W. J. Weeks, Secretary; Poynton's name was afterward stricken from the charter. I do not recall John Eddie's name being on the charter; neither do I recall Pat Colm nor Frank Shovlin. I read the charter after it was hung on the wall. My business took me in there most every day. It is not a fact that I am appearing as a witness in this case because of my feeling against Mr. Breen. (Trans. p. 478)."

These three men had no connection at the time of the trial and apparently for a long time prior to that time with either party to the controversy, but, as it appears, had previous to that time been connected with both parties.

In conflict with this, relating to the names on the bottom of the original charter, the witness Pat Leahy, testifying for the defendant, stated, in distinguishing the charters that upon the charter issued as a re-issuance of the old charter there were but two names, that of Mr. Mills and Mr. Moyer, while on the old charter he believed there were the names of about twenty of the charter members of Butte Miners' Union

No. 1 (Trans. p. 442). But this same witness on cross-examination (Trans. pp. 444-445) on being asked to distinguish as between the provisions of Exhibit "D," the Aspen charter, and the provisions of the charter of October, 1914, stated that, "There is a good deal of difference there that I would have to go through. It differs in this respect: 'It is hereby agreed in acceptance of this charter that the aforesaid union shall conform to the rules and regulations and in default thereof this charter may be revoked.' That was not in the old one. With the exception of that it is the same as the old one in the body of the charter, but in the old one names of the members, the charter members; in our old charter, the names of the charter members were in it right underneath the charter members. I could not say that the names underneath were the same as the names underneath on this one; I couldn't give you the names that were there. That charter was signed by John Gilligan and W. J. Weeks as President and Secretary, but that is the Aspen charter of Colorado and our charter belonged to Butte, Montana."

This same witness later on, on re-direct examination, tried to explain this portion of his testimony (Trans. p. 448); and this is the same witness that on page 441 of the transcript, when being asked what became of the charter of 1893, stated, "I guess that charter that was received in 1893 was blown to hell, or some other foreign country, wherever it went, I don't know, but

the hall was blown up.”

The witness Frank O'Connor stated, referring to the old charter of 1893, it did not contain a forfeiture clause of the property of The Butte Miners' Union (Trans. p. 434), but afterwards on cross-examination this same witness (Trans. p. 437-438), testifying with relation to the similarity and differences between the old charter and the charter of 1914, would not state that the names of Maloy, Cunningham, Poynton, Nicholas and McLennan were not on the old charter, he stating as follows: “I know of them, but I could not say whether their names were on the original charter or not.....I know Cunningham and Maloy, and they were members of the union.

The witness Wm. E. Deeney, testifying for the defense, stated, referring to the old charter of 1893, “There were a number of old names on that charter, I don't know how many, the majority or nearly all of them are dead. The charter in size was about fourteen inches by twenty-one inches or twenty-four inches, while I am not swearing to that that is my recollection (Trans. p. 424).”

This witness of course further testified that the so-called forfeiture clause was not in the original charter, but this witness afterward refused to testify as to the names on the original charter, stating: “Well, I forget the names of those who were on it. I would not attempt to testify to the names.”

The witness Jacob Oliver, testifying for the defendant, when being asked what the original charter contained, stated: "I could not say exactly what it contained. I saw it hanging on the wall (Trans. p. 415)." And in reply to the question as to whether or not it contained the so-called forfeiture clause he stated, "Not to my knowledge (Trans. p. 415)." And referring to the list of names on the charter he stated that, "On the charter there were a list of I think ten names taken from the old charter or the original charter members of The Butte Miners' Union; I think it was ten of the original names. (Trans. p. 415)."

And these are the witnesses testifying in contradiction of plaintiffs' witnesses as to the contents of the original charter and distinguishing the original charter from the re-issuance of the original charter, as claimed by the complainants, as the same is alleged in the Bill of Complaint, all but Wm. E. Deeney members of the defendant; so it is easy to see how the Court fell into the error of distinction in the charters by relying on the testimony relating to the names of members of the Federation or union at the bottom of the old charter. We believe it is plain to the Court here that the list of names at the bottom of the original charter were the same as those that appear on the bottom of the Aspen Charter, plaintiffs' Exhibit "D" (Trans. pp. 334-335).

And that portion of the Court's opinion relating to the stipulation having been contained in the original

draft of the charter and having been stricken out later, we are unable to find any foundation for in the testimony. Furthermore, in this connection we take an exactly opposite view to the Court below expressed in its opinion where it stated: "Further support is found in the likelihood that the defendant, the inspiration of the Federation, the only owner of property, of consequence, probably of ability to stand alone, and always the mainstay of the corporation, would not hazard its property upon an expeditmental Federation wherein it might be outnumbered and that the other union, desirous of its alliance, would yield a point (Trans. p. 302)."

The principal reason for differing with this conclusion is the fact that the Federation was brought into existence apparently to relieve The Butte Miners' Union of the single-handed fight for the rights of its own members and those engaged in a like occupation in a neighboring state and to relieve itself of burdens; as is shown by the testimony of the old-time residents and members of the old organization, that was its purpose.

The testimony of the witness Wm. E. Deeney states as follows: "I know the purpose of organizing the Federation, the reason of organizing it. I know from prior discussions that the intention was that there should be one general organization of miners in the State of Montana in the West, and that there should be one constitution and one initiation, and that on the

payment of one dollar they could be transferred from one local to another. I have many times read the first constitution issued by the Federation of Miners (Trans. pp. 425-426)."

And the witness Patrick Meaney testified on cross-examination, in reply to questions by Mr. Breen, as follows: "I know that you made the motion appointing the committee because we had the Peoples Headquarters, and it was your object to become the first President of the Western Federation of Miners, but we saw to it, as members of the Peoples Party that we had enough men there in the Miners' Union Hall to not allow you even to attend the first convention and that you were not even elected as a delegate. You tried to be president of everything that came up from a labor standpoint in the state at that time. At that time there was a state association but it was not an active association or organization. No organization of that kind had any definite purpose. The formation of the Western Federation of Miners was for the purpose of relieving the expenses of The Butte Miners' Union. At that time The Butte Miners' Union had property, as also did the Granite Mountain (Trans. p. 477)."

And we can find no place in the minutes of the original meeting at which the Western Federation of Miners was formed that refers to any distinction being made in charters for or to the different unions. (Trans. pp. 480 to 515).

It is very easy to see how the Court could fall into

the error as to the contents of the charter from relying upon testimony as to the form of the charter, especially when the Court did not have a transcript of the testimony before it; and it is very easy to see how the witnesses for the defendant, in testifying with regard to the form of the charter and the names at the bottom of it, could be testifying with regard to a charter received from the State of Montana at the time of the original incorporation of the defendant, for it can be seen from Exhibit "C" (Trans. p. 315), a letter written by Pat Lee, Secretary-Treasurer of the defendant to Ernest Mills, Secretary-Treasurer of the Federation, on the 24th of November, 1914, that there was evidently some old charter issued by the State of Montana which was lost or destroyed. This, undoubtedly, would be the charter that would have the names of the original charter members of the defendant upon it, for the corporation was formed before the Federation. So, we take it, that the evidence conclusively shows that as to the substance of the charter, the one issued and accepted in 1893 and the one issued as a re-issuance thereof in 1914 were identical.

The Acceptance of the Charter in 1914.

The application of the defendant for a re-issuance of the charter of 1893, made on the 22nd of September, 1914, was addressed and sent to the Western Federation of Miners and was done by authority of the corporation (Trans. pp. 6 and 7). The Western Federation of Miners, receiving that application, acted

upon the same and sent to The Butte Miners' Union the charter of date October 3, 1914 (Trans. pp. 8 and 9). Now, if this charter of October 3d, 1914, is a re-issuance of the charter of 1893, the contract as between the parties thereto became binding at the date of the receipt of the charter of October 3, 1893, which was previous to the 24th day of November, 1914. The letter of the Secretary-Treasurer of The Butte Miners' Union, the defendant plaintiffs' Exhibit "C" (Trans. p. 315), acknowledges the fact that the charter was received before that date. This charter was kept and retained by the defendant until the day of trial and until it was brought into Court (Trans. p. 469). There was no action taken by the defendant subsequent to the receipt of this charter in 1914 with regard to it until the 15th day of June, 1915, and it was never returned to the Federation (Trans. p. 469). After the receipt of this charter of October, 1914, the defendant continued to do business with and correspond with the Federation as shown by the testimony of the Secretary-Treasurer of the defendant (Trans. pp. 465-466-468-469).

"A contract becomes complete when there is an offer made and that is accepted by the party to whom the offer is made. In other words, the contract is complete when both parties have agreed to one and the same set of propositions. This is accomplished when, without duress or mistake on the part of either party one submits a proposition to which the other accedes,

provided such acceptance neither takes from nor adds to the offer, but accepts it in every respect just as it stands. When the offer is accepted on the terms in which it is made, before a valid revocation, the contract becomes instantly binding on the parties and neither party can subsequently recede from the contract without the consent of the other.”

Elliott on Contracts, Vol. 1, Sec. 36, p. 44.

The defendant contends that it continued to work, under the old charter of 1893 up to June 15, 1915, the time of its withdrawal; and even under this contention, if the same is true and the charter of 1893 contained the clause providing for the forfeiture of the property owned by the defendant at the time of its withdrawal, then under the theory that the case was tried on, the defendant is bound to perform the conditions of the charter of 1893, for the Secretary-Treasurer of the defendant testified that after receiving the charter of October, 1914, “We were working under the old charter.” (Trans. p. 465); and it further shows by the testimony of this same witness that the defendant even took legal counsel after the receipt of the charter of October, 1914, early in January, 1915, as to whether or not they should withdraw from the Federation, and they were advised not to until the suit was determined. (Trans. p. 471). The reference to the suit here is the suit by the President of the Western Federation of Miners and others against the officers of The Butte Miners’ Union, filed in December,

1914, a copy of amended complaint, in which, is plead by the defendant ⁱⁿ its answer herein as Exhibit "E" (Trans. p. 95 to p. 110).

If the charter of May, 1893, from the Western Federation of Miners to The Butte Miners' Union, a corporation, contained the clause, "It is hereby agreed in acceptance of this charter that the aforesaid union shall conform to the constitution, rules and regulations, and in default thereof, this charter may be revoked and the union suspended from all rights, and benefits, according to the laws of the Western Federation of Miners, and further, it is agreed that should the aforesaid union withdraw or be dissolved, suspended or forfeit this charter, then all property, moneys, books and papers, shall become the property of the Western Federation of Miners," the defendant is bound by the charter contract of both 1893 and 1914, since there is nothing illegal in said contract and since the event providing for the change of ownership in the property has come to pass. And the Court erred in not granting the relief prayed for in the bill of complaint.

If the corporation were a voluntary association, such as the complainant Western Federation of Miners, there could be no question as to the right of the Federation to take the property in accordance with the charter agreement, for such a proposition has been before the different Courts of the land time and time again, and the courts have taken cognizance of such

condition where there was no question of discipline or internal government and there is none in the case at Bar. In connection with this proposition the Supreme Court of the State of Washington in the case of Forrester's of America et al., vs. Hodel, reported in the 133 Pac. p. 438, upon a contention by the defendants that they could leave the lodge and take with them the property of the subordinate lodge, said "that such is not the rule" and held against the defendants. And to the same effect are all of the following cases:

Lone Star Lodge vs. Cole, 131 S. W. p. 1180.
Minor vs. St. Johns Grand Lodge, 130 S. W.,
893.

Supreme Lodge K. of P. v. Knight, 3 L. R. A.,
409 (See pp. 412 and 413).

Tompson vs. Grand International B. etc., 191
S. W., 834.

Wellenvoss vs. Grand Lodge, 45 S. W., 360
40 L. R. A., 488.

Grand Lodge I. O. O. F. vs. Barker, 103 N.
W., 193.

Grand Lodge K. of P. vs. Germania Lodge No.
50—38 Atlantic, 341.

The same principle of law has been further elaborated on in the case of Hochreiter's appeal, 93 Penn. 479 at p. 484, which case has been followed and affirmed in Pennsylvania in the case of Polich Asso-

ciation et al., vs. Kubiak, 238 Penn., p. 464, the last case being decided in 1913; and also in Freundschaft Lodge vs. Alchenburger, 235 Ill., p. 438. The Supreme Court of Kentucky, in speaking of such a situation as the one before us, except that, that was a schism in a religious organization stated:

“When a schism has occurred in a religious or benevolent association, which has united with and assented to the control and supervision of a general organization, and acquired property since its union and assent to the government of the general organization, by the investment of dues collected from its members while harmony prevailed, the title to the property remains in the name of the association and that faction which has remained loyal and adhered to the laws, usages and customs of the general organization constitutes the true association, and is alone entitled to the use and enjoyment of the association’s property.

“This rule applies whether the subordinate association be a corporation or simply a voluntary association and regardless whether the majority or minority of the entire membership constitute the faction adhering to and observing the laws, usages and customs of the general organization, provided the minority includes the minimum number necessary to support the local organization.

“Union Benevolent Society etc. v. Martin etc., 133 Ky. 25 (29).”

If the corporation defendant here had the power to contract, as these appellants claim it had and did contract as evidenced by the charter plead in the bill of complaint, it is immaterial whether the corporation or the Federation was the first in existence, for it must be borne in mind that there is no attempt and that there has been no attempt in this action, to dissolve the corporation or to interfere with its further business or any of its property subsequent to the 15th day of June, 1915, the date of its withdrawal.

And it might be well to state here also, that while a constitution and by-laws of an organization relate to its internal government and not to its general contractual powers and relations as to its conditions of becoming members, and as to conditions arising subsequent to membership, such as acts of severance of membership, we find, the constitution of the Western Federation of Miners before the Court providing in Sec. 4, Art. XV, as follows:

“The property of defunct unions shall be held in trust by the Federation, and where local unions are reorganized within a period of one year, comprising of twenty or more members of the former local the property so held in trust shall be returned to the organized local, but when the locals are reorganized with less than twenty members of the former local, they shall have no claim on the property of the defunct union. At the expiration of one year from the local going de-

funct the property shall cease to be held in trust and become the property of the Federation.”

Such a provision showing that the members among themselves regarded as a wise provision the ability to take and hold the property of unions that become defunct so as to secure something, in the matter of recompense to those who remain faithful, for services performed in the past to those who had passed away or who had severed their connection.

And in this same connection it may be well to remember that the rights of the parties in such controversies should depend upon their own intentions and agreements made at a time when all were in harmony and there were no schisms. Such has been held to be the rule in other jurisdictions as in Illinois and Pennsylvania.

Alcherburger vs. Freundschaft Lodge, 138 Ill. Appeal, 204.

Polish Association etc., v. Kubiak, 238 Penn., 464.

In conclusion we wish to state that we recognize, of course, the general rule that forfeitures are not enforced in Equity as in Law, but we believe it to be as well stated by the Illinois Court, in the last case above cited from that Court, that the rule is and should be:

“The constitution of the State Grand Lodge

as we read it expressly recognizes the supremacy of the United States Grand Lodge and that the State Grand Lodge is subordinate in authority to the United States Grand Lodge. It provides for the payment of the State Lodge of a per capita tax for the maintenance of the United States Grand Lodge, and for sending representatives to its meeting. If ever the withdrawing members of the organization have forfeited rights and property they did it by their own voluntary act, and in such case the rule against the enforcement of forfeitures in a Court of Equity, cannot be invoked.

So we respectfully submit that the decree of the Court below should be reversed and set aside and that an order should be made ordering and directing the Court below to enter a decree in conformity with the prayer of the bill of complaint herein or in such other manner and form as to this Honorable Court may seem just and meet in the premises.

Respectfully submitted,

CANNING & GEAGAN,
O. N. HILTON,
E. P. KELLY,

Attorneys for Appellants.

*Service of the foregoing brief of Appellants
acknowledged and copies thereof received
this 1st day of February, 1917*

Peter B. ...

United States
Circuit Court of Appeals
For the Ninth Circuit. 3

CHARLES H. MOYER, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, State of Colorado, CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Appellee.

BRIEF OF APPELLEE.

Filed

FEB 10 1917

A. C. McDANIEL,
PETER BREEN,
Solicitors for Appellee.

F. D. Monckton,
Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2875.

CHARLES H. MOYER, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, State of Colorado, CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,
Appellants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Appellee.

Brief of Appellee.

ADDITIONAL STATEMENT OF THE CASE.

While we have no fault to find with the statement of the case made by the appellants as far as it has gone, we still feel that it is not sufficiently full to correctly present the cause to the Court.

Reading paragraph 5 of plaintiff's complaint (R. 6) would give the impression that on the 22d day of September, A. D. 1914, the first application of defendant was made for a charter to the plaintiff, Western Federation of Miners, when instead what was asked at that time was a reissuance of a charter had prior to said date, which said charter had been destroyed. (R. 7.)

To the complaint of plaintiffs, defendant filed its answer, which, among other things, denies that at the time of filing of the said answer, the Western Federation of Miners was an active labor organization, further alleging that at one time the said Western Federation of Miners was a voluntary unincorporated association of persons, following the vocations described in plaintiffs' complaint, but that owing to certain abuses consisting of the perpetuation in official positions of the individual plaintiffs and others mentioned in said answer, and the collection of vast sums of money set forth in said answer, it became discredited in all mining sections formerly represented by it, and to all intents and purposes had ceased to exist. (R. 18-20.)

Defendant denies all of the allegations of paragraph 8 (R. 10) of plaintiffs' complaint, and further alleges that during the time that defendant was a local of the plaintiff, Western Federation of Miners, the said Western Federation of Miners drew as per capita tax, money for supplies, donations and assessments, both forced and voluntary, from the defendant, a sum in excess of One Million Dollars, and that when defendant was in trouble in the month of June and July, 1914 (R. 29), the plaintiff, Charles H. Moyer, President of the Western Federation of Miners, attempted to draw the money of defendant on deposit in the banking-house of the Daly Bank & Trust Company, in Butte, Montana, and that the said plaintiff, Charles H. Moyer, did later procure the adoption of an amendment to the constitution of the said Western Federation of Miners giving him

power, upon petition of ten per cent of defendant's members, preferring charges against its officers, to take possession, management and control of the property of this defendant, a Montana corporation, and that for the enforcement of said purpose, did institute and prosecute suits in the District Court of Silver Bow County, Montana, for said purpose, and further alleging in its answer (R. 30) that instead of the plaintiff, Western Federation of Miners, prosecuting suits on behalf of this defendant, this defendant has, at its own expense, on numerous occasions, personally employed counsel to defend the plaintiff, Charles H. Moyer, and other members of the Western Federation of Miners, and has contributed large sums of money to carry on litigation for and on behalf of the Western Federation of Miners.

Further answering, defendant sets forth nine affirmative defenses. For a more complete statement of its third affirmative defense (R. 31-50), this defendant claims that it incorporated under the Laws of the State of Montana, on the 4th day of May, 1881, and sets forth a certified copy of its Articles of Incorporation (R. 449-454), and did thereafter, in compliance with the said Articles of Incorporation, adopt a constitution and by-laws for its government, and did proceed to do and perform each and all of the obligations by it to be done and performed by its members in compliance with the laws of the State of Montana, and did thereafter, on the 8th day of February, 1901, renew its corporate existence, and did ever since it became a corporation under and by virtue of the laws of the then territory of Montana

carry on its business as such, and did in compliance with the power in it vested for the purpose of building a hall in which to hold its meetings and transact its business, establishing a library, caring for the sick and burying its dead, did, by their consent, collect monthly dues from each of its members, which said money was used for the said purposes, and that the plaintiff, or any of them, had nothing to do with the creation of the said fund, and further alleging that defendant was organized as a corporation under the laws of Montana, for a period of more than twelve years prior to the organization of the plaintiff, Western Federation of Miners, and had been doing business as a voluntary industrial organization for a period of nearly three years prior to its organization, which was antedating the birth of the plaintiff, Western Federation of Miners, a period of about fifteen years. Further alleging that by reason of the monthly dues so collected and the investment of its surplus funds created thereby, the defendant was able to build a hall, care for its sick and distressed members, bury its dead and fulfill the objects of its corporate existence, was further able to deposit in the banks of Silver Bow County, Montana, a large surplus of money, which on or about the 15th day of May, 1893, amounted to approximately Sixty Thousand (\$60,000) Dollars, and did during said time by reason of its income from dues and revenue derived from the rent of its hall and interest upon its deposits, after fulfilling the objects of its corporate existence, as aforesaid, and was enabled to

loan moneys to other miners' unions in the sum of approximately Fifteen Thousand Dollars.

Further alleging that no part of the said money and other properties above set forth was created by the plaintiffs, or any of them, or in any other manner than above specified.

Defendant, in its answer, further denies any authority under its constitution and by-laws whereby the property of one of its locals can become forfeited to or confiscated by the said Western Federation of Miners upon the withdrawal of the said local from membership in the Western Federation of Miners, and sets forth in its answer a true copy of the constitution and by-laws of the said Western Federation of Miners. Defendant further alleging that between the first day of July, 1913, and the first day of July, 1914, the defendant contributed to the plaintiff, Western Federation of Miners, the sum of \$158,925.60, and that the plaintiff, Western Federation of Miners, at the end of said period, claimed defendant owed them, in addition to the amount already contributed, the sum of \$60,415.65, and was denied any information as to what the said sums of money were to be used for.

Defendant further denies that it ever accepted the charter set forth in the complaint of plaintiffs, and continued for a short period of time to work under the old charter of May 15, 1893. Further alleging in said third affirmative defense that on the 18th day of December, 1914, Charles H. Moyer, C. E. Mahoney, Guy E. Miller, Ernest Mills and others brought an action in the District Court of

Silver Bow County, Montana, to get possession and control of the property of this defendant, and thereafter were granted a temporary restraining order, and thereafter evidence was heard upon the issues in said cause, and the matter was finally submitted to the Court on the 2d day of June, 1915, and the said trial court did, thereafter and upon the 12th day of June, 1915, file its conclusions of law in said case, finding all the issues in favor of the plaintiff, and did thereafter on the 14th day of June, 1915, sign a judgment in said matter in accordance with its said findings.

That thereafter and on the 28th day of June, 1915, the defendants therein named commenced proceedings in the Supreme Court of the State of Montana to annul said order of the District Court, and on said date the said Supreme Court of the State of Montana duly made and entered an order ordering the said respondents to appear before said Supreme Court on the 3d day of July, 1915, then and there to show cause, if any they had, why said orders made on June 12th and June 14th, 1915, should not be annulled and set aside; that a hearing was had on said proceedings before said Supreme Court on the 3d day of July, 1915, and said matter was submitted to the said Supreme Court for decision on said date.

That thereafter and on the 7th day of July, 1915, the said Supreme Court duly and regularly made, gave and entered its judgment in said matter annulling the said orders of the said District Court made on the dates above referred to. (R. 45-50, 232-234, 294.)

Because of the burdens imposed upon it, and the troubles caused it by the said plaintiff, the Western Federation of Miners, and for the further fact that it required the sum of \$919,522.03 to conduct the business of the plaintiff, Western Federation of Miners, for one year, and that a number of its officers had, in a period varying from twenty days to three months, handled large sums of money, the smallest being \$25,000 and the largest \$100,000, this answering defendant did, by resolution, withdraw from the Western Federation of Miners upon the 15th day of June, 1915. A trial of the cause was had on these pleadings as set forth in appellants' statements as the same appears (R. 1-295), and the Court upon hearing all of the testimony offered in support thereof found that appellee was incorporated in 1881 under the laws of the State of Montana, and also found that defendant and other labor unions organized the plaintiff, Western Federation of Miners in 1893, and further found that in 1893 defendant received a charter from the plaintiff, Western Federation of Miners, and further found that the said charter did not contain the forfeiture clause referred to in plaintiffs' complaint and in the answer of appellee. The Court also found that the charter for which application was made on the 22d day of September, 1914, was not accepted by appellee herein, and further found that even though the charter of May 15, 1893, and the charter of September 22, 1914 (if it had been accepted), did contain the said clause referred to as the "forfeiture clause," that it would be a nonseverable part of an entire and *ultra vires*

contract or agreement, and so unenforceable (R. 301), and in this connection the Court also found that the evidence was insufficient to establish that said stipulation was in the 1893 charter, and was, on the contrary, persuasive (R. 301) that ordinarily such a stipulation was opposed by this appellee, and was because of said opposition stricken out, and the appellee herein permitted to have a special charter of its own printed, which was done and dated May 15th, 1893, while the first charters printed by the Federation were ordered May 20th, 1893, and given numbers and first issued June 16th, 1893; the Court also comments upon the fact that for the above reasons the plaintiffs' suit was founded on the 1914 charter instead of the charter of 1893, and ordered a decree for defendant.

The assignment of errors filed by appellants are fifteen in number (R. 572-582), which we do not deem necessary to answer singly, but will answer them collectively. We are also of the opinion that appellants will not, in their brief, attempt to argue the case in the order set forth in its said assignment of errors.

It is alleged in the bill of complaint of plaintiffs, and admitted in the answer, that the appellee is a Montana corporation, incorporated as such on the 4th day of May, 1881, and that it has existed as a bona fide voluntary incorporated organization of workingmen and miners since June 13th, 1878; the date of its first organization as a body of union men. The law governing corporations of this character, and under which appellee was incorporated is copied

from the laws of Montana, Revised Statutes of 1879, page 462, which reads as follows:

RELIGIOUS, BENEVOLENT, AND OTHER LIKE CORPORATIONS.

Sec. 292. Associations for the purpose of establishing and conducting churches, lyceums, libraries, lodges of Free and Accepted Masons, Odd Fellows, Good Templars, granges of Patrons of Husbandry, and all other associations, societies, and orders of like character, Agricultural Societies, Stockgrowers' Associations, and other associations and institutions of a like character, may become incorporated upon complying with the provisions of this article.

Sec. 293. It shall be lawful for any such association, at a regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect: Resolved, That the trustees of this (lodge, or other association, as the case may be), to wit: (A, B, C, D, etc., giving the names of the duly elected trustees), be, and are hereby, authorized to incorporate this (lodge, or as the case may be), and for that purpose to file with the proper officer such certificate as is required by law; and said trustees shall conduct the affairs of the corporation so formed until (date at which, by the laws of such association, the next annual election of the trustees thereof occurs).

Sec. 294. The trustees, of whom there shall not be less than three, nor more than nine, named in such resolution, may thereupon make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this Territory, and have recorded in the office of the recorder of the county in which the affairs of such association are to be conducted, or, if such corporation shall be a grand lodge, or other body having associations subordinate to it in several counties, then, in the office of the secretary of the Territory, a certificate in which shall be stated the name, or title, by which the association shall be known, the particular business or objects of the

association, the number of trustees to conduct the same, and the time of the annual election of such trustees, and shall attach to such certificate a copy of the resolution required by section 293 of this article, which copy shall be certified by the presiding and recording officers and the seal of such association.

Sec. 295. Upon filing for record such certificate, such association shall become a body politic and corporate, with power to sue and be sued by its corporate name, to have and use a common seal, which may be altered at pleasure, to establish a constitution and by-laws, and make all such rules and regulations as may be deemed expedient for admission to membership therein, and the termination of such membership, and for the management of its affairs, in accordance with law; to take by purchase, gift, grant, or devise, and hold and use personal property, and so much real estate as may be necessary or convenient to carry out the objects for which it was formed, and to dispose of such property: Provided, That the period of existence of such corporation shall not exceed twenty years.

Sec. 298. That the act entitled "An act to provide for the formation of corporations other than those for pecuniary profit," approved February 9, 1876, be, and the same is hereby, repealed: Provided, That such repeal shall not affect any incorporation formed under said act prior to the passage of this article.

The said law was thereafter amended or re-enacted by the 8th Session Legislative Assembly of the State of Montana, in 1903, and is contained in the Laws of Montana of the 8th Session, 1903, at pages 141-144. A true copy of said Session Laws is herein set forth.

An act to amend Sections 860, 861, 862, 863 and 865 of the Civil Code relating to Religious, Social and Benevolent Corporations.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

Sections 860, 861, 862, 863 and 865 of the Civil Code are hereby amended so as to read as follows:

860. Associations, where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, and all other associations, societies and orders of like character, and social clubs and agricultural societies, stockgrowers' associations, and other associations of like character, including local, independent and subordinate organizations as well as State, representative, supervisory, governing and grand organizations and bodies, of any such associations, society or order may become incorporated upon complying with the provisions of this Title.

861. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

"Resolved, That the Trustees, of this (Church, synod, presbytery, conference, assembly, lodge, grand lodge or other association, as the case may be), to wit: (A, B, C, D, etc., giving the name of the duly elected Trustees or Directors) be, and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law." The Trustees or Directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified.

862. The Trustees or Directors of whom there must be not less than three and not more than thirteen, named in such resolution may thereupon make, file and record in the office of the County Clerk and Recorder of the County where such association is located, if such association be a local or subordinate

association, or in the office of the Secretary of State, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to such articles a copy of the resolution provided for in Section 861, certified to by the President or other presiding officer, and the Secretary or other recording officer of such meeting. In lieu of the requirements of Section 403 of this Code such articles of incorporation must contain the following:

1. The name of the Corporation.
2. The purpose for which it is organized.
3. The number of Trustees or Directors for the first year of the corporate existence of such corporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with laws and enforce the same by appropriate penalties; have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate and may use and dispose thereof only for the purposes for which the corporation is organized.

863. Corporations organized for the purposes other than profit may, in their by-laws, ordinances, constitutions or articles of incorporation, in addition to the provisions in Section 862 of this Code, provide for:

1. The qualification of members, mode of election, and terms of admission to membership.
2. The fees of admission and dues to be paid into their Treasury by members.
3. The number of members that constitutes a quorum at any meeting of the Corporation, and an election of officers of the Corporation by a meeting so constituted, shall be as valid as if there had been a majority of the members present thereat and voting.
4. The expulsion and suspension of members for misconduct or nonpayment of dues; also for restoration to membership.

5. Contracting, securing, paying and limiting the amount of their indebtedness.

6. Other regulations, not repugnant to the constitution or laws of the State and consonant with the objects of the Corporation.

865. Corporations of the character mentioned in this title heretofore organized or that may be hereafter organized may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws or resolutions.

Section 2.

All Acts and parts of Acts in conflict with this Act are hereby repealed.

Section 3.

This Act shall take effect and be in full force from and after its passage.

Approved Mch. 5th, 1903.

This Act was again amended as appears by Sections 4224 and 4229, inclusive, Revised Codes of Montana, 1907, a true copy of which reads as follows:

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

4224. Churches, charities, and fraternal societies. Associations, where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, and all other associations, societies and orders of like character, and social clubs and agricultural societies, stockgrowers' associations, and other associations of like character, including local, independent and subordinate organizations as well as state, representative, supervisory, governing, and grand organizations and bodies, of any such associations, society or order may become incorporated upon complying with the provisions of this Title. (Act approved March 8th, 1903, §1.) (8th Sess., Chap. 70.)

4225. Resolution to become incorporate.—It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

“Resolved, That the Trustee of this Church, synod, presbytery, conference, assembly, lodge, grand lodge or other association, as the case may be, to-wit: (A. B., C. D., etc., giving the name of the duly elected Trustee or Directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law.” The Trustees or Directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. (Act approved March 8th, 1903.) (8th Sess., Chap. 70.)

4226. Articles of incorporation. Powers of corporation.—The Trustees or Directors of whom there must be not less than three and not more than thirteen, named in such resolution may thereupon make, file and record in the office of the County Clerk and Recorder of the County, where such association is located, if such association be a local or subordinate association, or in the office of the Secretary of State, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to said articles a copy of the resolution provided for in Section 4225 (861) certified to by the President or other presiding officer and the Secretary or other recording officer of such meeting. In lieu of the requirements of Section 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the Corporation.
2. The purpose for which it is organized.
3. The number of Trustees or Directors for the first year of the corporate existence of such corporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with laws and enforce the same by appropriate penalties; have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate and may use and dispose thereof only for the purposes for which the corporation is organized. (Act approved March 8th, 1903.) (8th Sess., Chap. 70.)

4227. Corporations organized for purposes other than profit may, in their by-laws, ordinances, constitutions or articles of incorporation, in addition to the provisions in Section 4226 (862) of this Code, provide for:

1. The qualification of members, mode of election, and terms of admission to membership.

2. The fees of admission and dues to be paid into their Treasury by members.

3. The number of members that constitutes a quorum at any meeting of the Corporation, and an election of officers of the Corporation by a meeting so constituted, shall be as valid as if there had been a majority of the members present thereat and voting.

4. The expulsion and suspension of members for misconduct or nonpayment of dues; also for restoration to membership.

5. Contracting, securing, paying and limiting the amount of their indebtedness.

6. Other regulations, not repugnant to the constitution provided for in Section 4225 (861), certified to by the President or other presiding officer and the Secretary. (Act approved March 5th, 1903.) (8th Sess., Chap. 70.)

4228. Incorporation of church or religious societies.—The representative body of any church or religious society in this state, such as conference, synod, convocation, convention, or the like, may elect not less than three of its members of such church or religious society, as trustees with authority to form a corporation for holding and administering all trust

funds for general or special purposes, or for holding the legal title to real estate for use and in trust for the said church or society, or any congregation or parish thereof, and for conducting and transacting the business affairs of such church or religious society, or any congregation or parish thereof; and any church or religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for this purpose. Such persons so appointed as trustees must, thereupon, make, execute, acknowledge and file articles of incorporation in the office of the county clerk and recorder of the county wherein such business is to be transacted, and a certified copy thereof in the office of the secretary of the state of Montana. Such articles may contain the statements set forth in Section 4226 (862) of this Chapter, as amended. There must be attached to the articles of incorporation a transcript of the record of their election as such trustees, certified to by the presiding and recording officer of the body by which they are elected and, thereupon, such persons and their successors in office shall become a body politic and corporate, and shall have and exercise the powers set forth in Sections 4226 (862) and 4227 (863) of this Chapter, as amended by the Act approved March 15, 1903, and such corporation may, also, in its by-laws or articles of incorporation provide for the number, name or designation of its officers, their qualifications, duties, terms of office, and manner and time of election or appointment. (Act approved March 5, 1907.) (10th Sess., Chap. 105.)

4229. (§ 865.) Power to mortgage or sell property.—Corporations of this character mentioned in this title heretofore organized or that may be hereafter organized may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws or resolutions. (Act approved March 5th, 1903.) (8th Sess., Chap. 70.)

The said Act was again amended by the Legislative Assembly of the State of Montana, and was ap-

proved by the said body on March 6th, 1909, and is found on pages 136, 137 and 138 of the Laws of Montana, 11th Session, 1909, a true copy of which reads as follows:

A Bill for an Act to Amend Sections 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of 1907, Relating to Religious, Social and Benevolent Corporations, and providing that Two or More Religious, Social or Benevolent Corporations May Incorporate Conjointly.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of Montana, 1907, Respectively be amended so as to read as follows:

Section 4225. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

“Resolved, That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to wit: (A. B., C. D., etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law.” The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property, conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section

instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under the provisions of this chapter, and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation.

Section 4226. The trustees or directors of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to such articles a copy of the resolution or resolutions provided for in Section 861 of the Civil Code, being Section 4225 of the Revised Code of Montana of 1907 certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of Section 3818 (403) of this Code such Articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest, personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1909.

Reading the law under which appellee was incorporated and all of the amendments thereto adopted since the date of its incorporation will show to the Court that none of the amendments later enacted enlarge the powers conferred upon appellee at the date of its incorporation.

Under and by virtue of the Laws of the State of Montana as above set forth, the following Articles of Incorporation were adopted by the appellee on the said 18th day of April, 1881. (R. 449-453.)

ARTICLES OF INCORPORATION OF BUTTE MINERS' UNION.

KNOW all men by these presents, that we the undersigned, residents of Silver Bow County, Montana Territory, pursuant to a resolution of the Butte Workingmen's Union (whose name has since been changed to that of the "Miners' Union," being an association of miners and others) adopted at a meeting held for that purpose in Butte City, of said County and Territory, prior to the signing and sealing of these presents, which resolution is as follows, to wit:

"Resolved, that the trustees of the Butte Working Men's Union, to wit: Eugene Sullivan, Charles S. Shoemaker, Michael Grace, James Cardigan, and Henry Rodda be, and are hereby authorized to incorporate this union, and for that purpose to file with the proper officers such certificate as is required by law; and that said trustees shall conduct the affairs of the corporation so formed until their successors are elected at the next annual election held for that purpose," do this day hereby associate ourselves together for the purpose of incorporating said association under the laws of the territory of Montana:

That said association shall be known by the corporate name of "The Miners' Union," and we hereby certify that the objects for which this corporation is founded are: To protect the interests of the membership of said association, and to enable it to hold such property as may be necessary for the promotion of its good and the advancement of the interest of the same, and to enable it to establish subordinate organizations, and to become a body politic and corporate in law and to this end.

1st. The property of said association shall be held by the trustees thereof, and their successors in office, as such, with the exception of money, which shall be held by the Treasurer of said corporation.

2d. The trustees shall have power to sell, lease or mortgage any real estate or other property the corporation may have, or may hereafter acquire, for the purpose of enabling said corporation to erect and maintain a Hall for the meeting of said society, to wit: The Miners' Union.

3d. The trustees shall have the power in their discretion to issue stock which shall be unassessable, for the purpose of building and maintaining said Hall, but said stock so issued shall not exceed in amount the sum of Ten Thousand Dollars (\$10,000).

4th. Said incorporation may at any time, provide itself or the public with a public or private library, and may lease or rent any portion of any property owned and not otherwise used for said purpose.

5th. Said incorporation shall have power to sue and be sued, to plead and be impleaded in their corporate name.

6th. Said incorporation may have a seal which may be changed at pleasure.

7th. That said trustees shall hold their office until the first annual meeting in *in* March, A. D. 1882, or until their successors are elected, and that thereafter a board of trustees consisting of not less than five, nor more than nine, who shall be members of said society, or incorporation, "The Miners' Union," shall be elected for the period of one year, or until their successors are elected, and that in case

of any vacancy happening in said board of directors, said corporation shall have power to elect one or more of its members to fill such vacancy or vacancies, at any meeting after the happening of the same: That as soon after the election of said trustee, or any of them, as may be, the President of said incorporation shall issue under his hand and the seal of said incorporation, a certificate of election to each of said trustees so elected, which shall be good and sufficient authority for authorizing said trustees to act for said incorporation.

8th. Said incorporation shall be subject to such rules and regulations as it may now have for its government, or may hereafter enact, provided they are not contrary to these Articles of Incorporation.

9th. Said incorporation shall have power to establish branch organizations, which shall be subject in their government to the rules and regulations of this society, to wit: "The Miners' Union"; but in all other particulars they shall be free and independent; That when any nine persons desire to establish a branch organization they may apply to the President of the Union, who may, in his discretion authorize the institution of such branch society, and shall, when so established, grant to said branch society, a Charter, signed by himself and the Recording Secretary and attested under the seal of said incorporation.

10th. That the private property of the members of this incorporation shall not be subject to the corporate debts of the same.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 18th day of April, A. D. 1881.

CHARLES S. SHOEMAKER.	(Seal)
EUGENE D. SULLIVAN.	(Seal)
MICHAEL GRACE.	(Seal)
JAMES CARDIGAN.	(Seal)
HENRY RODDA.	(Seal)

Territory of Montana,
County of Silver Bow,—ss.

On this 18th day of April, A. D. 1881, before me, the undersigned, a Notary Public in and for the Territory of Montana, personally appeared James Cardigan, Eugene D. Sullivan, Harry Rodda, Michael Grace and Charles S. Shoemaker, to me personally known to be the persons described in, and who executed the foregoing instrument, and who severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year in this certificate above written.

(Notarial Seal)

(Signed) CHARLES S. WARREN,
Notary Public, Montana Territory.

It further appears that the corporate existence of appellee was seasonably renewed. (R. 454.)

The Revised Statutes of Montana, 1879, as above set forth, show how appellee was incorporated and the amendments thereto above thereafter set forth show that its powers and privileges have not in any manner been changed since its incorporation.

The Articles of Incorporation of appellee above set forth, and as the same appears of Record, pages 449 to 454, show what its purposes and objects were, and what it could and could not do. In view of the above we respectfully submit that the Trial Court did not err when it handed down its opinion and ordered a decree for this appellee.

The laws of Montana, as above set forth under which appellee is, and was incorporated, provides how its property can be acquired, held and disposed

of. Appellee, a corporation organized under the Laws of the State of Montana, exists for certain definite and specific purposes; its assets are, in a certain sense, held in trust by its officers, nor can the corporation by a distinct contract divert its assets to some other channel. The defendant corporation was organized under the laws of Montana for the benefit of its members, for local purposes, social and benevolent purposes, charity in rather a broad sense, and protection to its members and their families. The limited funds raised by it were raised so that it might carry out its original purposes. At the date of its birth and for fifteen years thereafter it had nothing to do with the appellant, Western Federation of Miners, as the said appellant had no existence during that period of time. No contemplation was had under its Articles of Incorporation that it might trade off its authority, its corporate entity and the property which it might acquire to some other corporation, association or institution, foreign in its nature. Any funds which it had on hand were raised for the purpose of caring for its sick, burying its dead, feeding, clothing and housing the living dependents of its deceased members. The assumption on the part of the appellant, Western Federation of Miners, to issue a charter to a corporation already organized, and to provide therein for its suspension or dissolution on certain contingencies arising, and for the absorption of its property is in conflict with the authority given by the State to the corporation (appellee herein), and is in conflict with the other purposes of its creation, and would be contrary to

public policy, and of no force and effect whatever. It is unreasonable to suppose that appellee, regardless of any prohibition contained in its Articles of Incorporation, would enter into such a contract. On the 15th day of May, 1893, the date of the birth of the appellant, Western Federation of Miners, it was nothing but an infant organization at said time, created by appellee, who, as aforesaid, had been in existence fifteen years, and who together with other organizations from the State of Montana, the States of Idaho, Colorado and South Dakota, joined in its creation; that at said date appellant was without one dollar of property; that at said time it was an experiment; that under the laws of Montana, and under its Articles of Incorporation, this appellee had power to create the appellant, Western Federation of Miners, or to create other local organizations, which would be subject, in their government, to the rules and regulations of this society, to wit: The Miners' Union (R. 452), and to issue charters to them, and, as above stated, did create and assist in creating appellant, but nowhere does it appear in the said Articles of Incorporation, or under the laws of Montana, as above set forth, how it could subordinate itself to the appellant, Western Federation of Miners, or any other body or organization. The property of appellee was contributed to it by the individual members thereof for certain specified purposes. We claim that the funds so created cannot be diverted or used for any other purpose than those set forth in its Articles of Incorporation or incidental thereto. Appellant claims the said property

of appellee by virtue of a charter contract, but fails to state for what purpose they will apply or use the said funds or property of appellee if successful in this suit.

The Court, after hearing all of the testimony in this case, found that the charter set forth in appellants' complaint (R. 8-9) was not accepted by appellee, and further found that the said charter above referred to was not a duplicate or reissuance of the charter bearing date May 15, 1893, and that the charter of 1893 contained no forfeiture clause of the character referred to by appellant.

The Court further found that even though either or both of the charters referred to in the evidence contained said forfeiture clause, that the laws under which appellee was organized and under the power granted by its Articles of Incorporation it could not enter into a contract of this character. Such a contract would be unenforceable. (R. 296-302.)

It would needlessly encumber the record to separately argue the two propositions, namely, the non-acceptance of the 1914 charter, and the fact that the 1893 charter did not contain the forfeiture clause, so we will argue them jointly, and for said purpose, and for the purpose of placing this Court as near as possible in the position of the lower court, we will set out the evidence contained in the record in so far as the same relates to the above propositions.

The first witness called by appellant on direct examination by Mr. Geagon was Charles E. Mahoney, who testified as follows:

Q. Do you know of what state Mr. Moyer is a citizen? (R. 307.)

A. Yes. (R. 308.)

Cross-examination by Mr. BREEN.

The WITNESS.—I stated that I was vice-president of the Western Federation of Miners, and I have been such since 1906. Prior to that time I was a member of the executive board. Those offices carry with them a salary. I went on the executive board in September, 1904.

Q. And the salary, I believe, is seven dollars and fifty cents a day and railroad expenses? (R. 342.)

A. No, sir. * * * My salary is five dollars a day and my expense account is two and a half a day. I also get my railroad fare in addition to that. (R. 342.)

I have testified as to the citizenship of Mr. Moyer. I don't know positively as to what local he is a member. I don't recall testifying that he was a member at large; don't remember of testifying to that a year ago. (R. 345.)

Q. You do know that there is no such thing as a member at large provided for by the Constitution, don't you? (R. 343.)

A. A union at large is the same as any other local; it bears the same relation to the Western Federation of Miners; is comprised of men who may join it and not be assessable to other local unions.

This little blue book which you show me is the Constitution and Laws of the Western Federation of Miners. It is the last constitution adopted by referendum vote of the membership.

Document marked Defendant's 2 for identification.

Q. Will you examine Defendant's Exhibit 2 for identification and show us where there is any provision in it providing for either a member at large or a local at large?

A. Section 1 of Article 1 provides that the organization, the local union, pay per capita tax to the entire organization or the Western Federation of Miners. The Union at large has been in existence for a great many years.

Q. Call our attention to it. Tell us that paragraph. Show us the section.

A. It assumes the same relation to the international organization as any other local union.

Q. I would ask that the witness be requested to answer the question. (R. 344.)

The COURT.—I understood the witness was reading from the document.

Mr. BREEN.—No, he is not reading anything.

The COURT.—Well, if you can, point out anything in the exhibit in your hand providing for membership at large or a union at large.

A. I have answered the question, your Honor, that it bears the same relation as any other local union.

The COURT.—No, you are asked to point out something in relation to it in the constitution and by-laws.

A. There is nothing in the constitution and by-laws only the issuance of charters to local unions. (R. 345.)

The WITNESS.—I am one of the plaintiffs in this

action and have set up a claim of ownership to this property as specified. (R. 346.)

ERNEST MILLS, a witness called on behalf of appellant testified in relation to receiving the application for a charter in 1914, and the forwarding of the same (R. 308-317), and further testified in part (referring to charter) as follows:

The WITNESS.—That was forwarded to the Butte Miners' Union at the time it was dated. I am acquainted with the signature of Mr. Lee, and this is Pat Lee's signature. At that time he occupied the office of Secretary-Treasurer of the Butte Miners' Union. I received this letter in due course of mail from Mr. Lee. (R. 314.)

**Plaintiffs' Exhibit "C"—Letter November 24, 1914,
Lee to Mills.**

Hall of

BUTTE MINERS' UNION.

Organized June 13, 1878.

Butte, Mont., Nov. 24th, 1914.

Ernest Mills,
Denver, Colo.

Dear Sir & Bro.

In reply to you concerning the charter we have received it but there is a little dispute about putting it up as some of the members wants a copy of the old charter from Helena, Mont.—we have written their but has not heard from the Sec. of State. I suppose he is busy going over the election returns.

Hoping you will excuse me for not answering your litter sooner but have been sick for two weeks.

(Seal)

Fraternally yours,

PAT LEE,
Sec. Tres.

(R. 315.)

Cross-examination by Mr. BREEN.

The WITNESS.—The charter presented here, the charter sent and a correct copy offered in evidence here, to all intents and purposes was intended to be a reissuance of the charter that was lost or destroyed on the 13th of June.

Q. Mr. Mills, is it not a fact that the charter received on or about May 15, 1893, was a copy of a state charter, only briefly changed to meet the requirements, and contains the names on the charter of the members of the Butte Miners' Union at its organization; and is it not further a fact that you asked John Sheehan if he could get ten names—delegates of the Butte Miners' Union—if you could (R. 322) get ten of the names that were on the other charter?

A. The original charter had the names of the charter committee printed on it. The body of the charter said "The Western Federation of Miners of America," and later on the names of "America" was by action of the convention knocked off.

Q. Is it not a fact that at the time of the old charter there was no forfeiture clause of the kind that is contained in the second charter, the following—is it not a fact, Mr. Mills, that these words contained on this charter were not contained in the old charter: "It is agreed that should the aforesaid union withdraw or be dissolved," substantially, or forfeit its charter, then all property, money, books, and papers shall become the property of the Western Federation of Miners? A. That was in the original charter.

The WITNESS.—I know that, because I have care-

fully looked over copies of the charter issued at that time. I may have seen the charter of the Butte Miners' Union, the defendant here, but I never paid any particular attention to it. I have been a member of the Federation since 1899. The federation was six years at least in existence before I knew anything about it. I did not know that at the time of the organization of the Western Federation of Miners, the Butte Miners' Union, this defendant, was the only local miners' union that owned one dollar of property. I know nothing about its financial condition at that time. (R. 323.)

Q. And you know nothing about the organization of the Federation or where it was organized or anything about it, prior to the time you mentioned, 1899?

A. I have read the records. I read the original minutes of the original meeting and they follow very closely. They are in Butte, and I now produce them. I did not say I knew the old charter and what was in it. I simply said I was drawing the inference from the fact that I looked over the copies of the charters at that time, and assumed the charter was the same. I was unable to place W. J. Weiks and Morris on the charter I issued.

Q. Do you know that W. J. Weiks was not on the old charter, and that he was not one of the charter—

The COURT.—The new charter contains these names.

Mr. BREEN.—The first charter.

The COURT.—And the new one has not?

Mr. BREEN.—No.

The COURT.—Then the fact stands admitted that

the reason he did not put them there was not material.

The WITNESS.—I received the letter received in evidence and marked exhibit "C" from Mr. Lee, in which he mentioned, "in reply to your letter concerning the charter, we have received it and there is a little dispute about it being the same. Some of the members want a copy of the old charter from Helena, Montana. We have written there," and so on. I at no time received any communication (R. 324) from this defendant corporation that the charter was accepted.

Q. You never received a communication that the charter was accepted, did you?

A. That communication acknowledged the receipt of it.

Q. Received through the mail, didn't it?

A. Yes, I think it was registered and there was a register receipt, and I have got that, yes.

Q. But you know nothing about what Mr. Lee referred to about a little dispute and so on; you know nothing of that other than what is stated in the letter.

A. Other than what is stated in the letter. (R. 325.)

Q. Mr. Mills, you stated on direct examination that you, or that the Federation, speaking for the Federation, had brought suits and defended suits for the Butte Miners' Union. I don't recall the wording of your answer.

A. They defended suits that were brought against the Butte Miners' Union and Western Federation of Miners in South Dakota. * * * In the suit

I mentioned the Butte Miners' Union did not pay all the expenses and employ counsel and furnish the witnesses. * * * I think the first suit was to set aside the Butte Miners' Union mortgage. The Western Federation of Miners defended the Butte Miners' Union in that suit, and put in a counterclaim (R. 327) other than the mortgage. The Federation proved it was a counterclaim; and the Butte Miners' Union made the President its trustee to act for it. Mr. Moyer did not take that position himself without the knowledge of the Butte Miners' Union, I don't think. I understand you have brought an action against Mr. Moyer and the sheriff to set aside that assumption of trusteeship, and it is pending now in the Federal Court. That was all the litigation I had in mind, the only cause of action I referred to, in that December trial. (R. 328.)

WILLIAM WALSH, a witness called on behalf of appellants testified that he was a member of appellee at the time of the organization of appellant, Western Federation of Miners; that he had examined the charter bearing date of May 15, 1893, and the Aspen Charter No. 6, Plaintiffs' Exhibit "D" (R. 334-335) and that they were similar. On cross-examination by Mr. Breen, the witness testified as follows:

Cross-examination by Mr. BREEN.

The WITNESS.—I was not a delegate from the Butte Miners' Union, the defendant here, to the first convention of the Western Federation of Miners. I was at the meeting of the Butte Miners' Union during the session of the convention in Miners' Union

Hall when they made their report. It is a long time ago and I don't know that I could recall any of the proceedings of that meeting to mind now.

Q. Do you recall the inquiry being made or any inquiry being made by the Miners' Union, the Butte Miners' Union, as to what effect becoming a member of the Western Federation of Miners that was organized would have on its property and effects?

A. I cannot recall any at this time.

The WITNESS.—I recall a motion being made to become a local of the Federation; I recall that such action was taken at that time, but I don't know that I could state who made the motion.

Q. Mr. Walsh, do you recall a discussion at the time as to what effect becoming a member would have on the property of the Butte Miners' Union?

A. All that I can recall is that it was discussed there for several meetings, and for six months prior to the organization, the features of going into this Federation, but I could not recall at this time what, or state positively anything in regard to who made the motion or what the discussion was outside of a general discussion leading up to the organization and its perfection.

Q. Do you recall that at that time the Butte Miners' Union was possessed of approximately sixty thousand dollars in the bank, or some large sum, owned its property and had a mortgage on some Coeur d'Alene property and in the Granite Mountain Hall, a large amount of property?

A. Well, I know it owned its own property, but the exact amount of money in the bank at that time I don't know that I could state positively. (R. 337.)

The above is all of the testimony offered in direct by appellants in the trial court, in so far as the same applied to the question of the acceptance of the 1914 charter, and the 1893 charter.

Witnesses on behalf of appellee were then called and testified in support of its position at said trial, which testimony in so far as the same relates to the wording of the charter received from appellant, Western Federation of Miners on May 15, 1893, and in so far as it relates to the rejection of the charter of October, 1914, is as follows:

CHARLES BAXTER, a witness called on behalf of appellee, defendant below, was called and testified as follows:

Direct Examination.

(By Mr. BREEN.)

Q. Mr. Baxter, were you familiar or do you know anything of the organization of the Western Federation of Miners, or when it was organized.

A. As to the joining of the Western Federation of Miners by the Butte Miners' Union, I know there was a committee appointed to meet with other committees from locals of Miners' Unions in different parts of the country for to get together to try to organize a body for mutual protection and benefit. At that time there were other miners' unions in the vicinity of Butte, and in Montana, such as one at Neihard, and I knew of one in Granite. (R. 353.)

The WITNESS.—I saw the first charter that was received from the Western Federation of Miners hanging in the hall on the wall many, many times, and I was at one or more meetings prior to the adoption of the first charter, from the Federation, when the question came up as to whether the Butte Miners' Union would become members of the Federation; whether they would join in with the new organization that was proposed to be formed.

Q. Was there at any time, or was there in the charter that was received, any clause of a nature referred to here whereby all of the property would be forfeited if they joined the Federation and then saw fit to withdraw. (R. 354.)

A. I have read the charter over several times and I never saw any clause authorizing the forfeiture of the property and the money; I read the charter and never saw it, and I read it from beginning to end.

Q. Will you tell us whether or not the question of what effect a joinder with the Federation would have on the property of the Butte Miners' Union was discussed at those meetings that you referred to?

A. I heard it discussed at one or more meetings, and also on the street corners and in the mine amongst the members of the union, as to what effect it would have us joining the Federation, whether we would be responsible in any way, or whether they could hold our money in any way if we joined. (R. 355.)

Q. Was there any difference between the charter your attention was called to and the old charter? (R. 356.)

A. And my attention was called to the forfeiture clause in the new charter which I could never recall having seen in the old one.

The WITNESS.—There was no other difference existing between that charter that I can recall, and the old charter. Another difference in the charter, in the bottom of the charter there were a lot of names attached to the old charter that were not on the new one, but the body of the charter was practically the same except for the forfeiture clause.

Q. Then after this examination that you made of the charter, that your attention was called to, what was done with the charter?

A. As near as I can recall it, it came under the head of "Good and Welfare" at the meeting that night. Someone mentioned the fact of its coming up and mentioned it that "we have received a new charter" and one of our members, Pat Leahy, to be exact with the name, picked it up and looked it over and read it, and he said: "We have no use for that," he says, "We don't want to lose our property," and he threw it on the table. (R. 357.)

A. (Continuing.) What I heard him mention was "that we have no use for that," and he threw it on the table, and I think that was the end of it, and there was no other action taken on it at that meeting.

Q. Was this charter that was signed on or about the fifth day of October, or the one bearing date, I believe, of Denver, dated October 3d, was that charter ever accepted by the Butte Miners' Union, a corporation, the defendant here?

A. Never, to my knowledge.

The WITNESS.—The charter referred to the one which bears the date of Denver, October 3d, 1914, to my knowledge was tendered to Charles Mahoney, one of the general officers of the Federation as not being a state charter. Pat Lee made that tender. At that time, Mr. Mahoney said, “We don’t want it,” or “I don’t want it.” (R. 358.)

Appellee, defendant below, then offered in evidence Defendant’s Exhibit 2 for identification, namely, the constitution of the Western Federation of Miners (R. 369–406), and particularly section 3 of article 1 (R. 372) and section 1 of article 6 of said Constitution (R. 385), and section 4 of article 15. (R. 398.)

The WITNESS.—The property of the Butte Miners’ Union was accumulated by the monthly dues collected from the members, and those monthly dues were collected for the purposes of paying the running expenses every month, and paying sick and funeral benefits and also giving donations to a brother who happened to be in need. It was used for that purpose, and that has been the policy since the year 1890, when I first became a member. (R. 366.)

Cross-examination by Mr. HILTON.

The WITNESS.—I stated to the counsel that I was familiar with the phraseology or wording of the original charter, that I had seen it several times and read it, and to the best of my recollection it did not contain any forfeiture clause, and that is right.

* * * But one of the reasons which drew my at-

tention to the forfeiture clause was that it was discussed, and discussed repeatedly among members of the union, by the individual members, and also as I stated before at at least one meeting that I was at. The only notice that I ever knew of or heard at all, by motion or evidenced by any record relating to the charter here whereby the charter was questioned because it contained that forfeiture clause, after the receipt of that charter by our membership, was when Pat Lee, who was Secretary-Treasurer, said he sent to Denver, and it was discussed under the head of good of the order. As far as my knowledge goes, it was not discussed except as to the litigation of the matter. Now, I am speaking with reference to the last charter. There was an effort made to return this last charter to the Federation. It was offered to Mr. Mahoney one day when I was up paying my dues at (R. 407) the office. That was the only tender that was made of the charter to return. I could not say whether that was done by reason of any order or action taken by the local. It was done by one of their officers. Pat Lee was the man who tendered that back, and was having a conversation with Mahoney. I cannot tell whether he was authorized to tender it to Mr. Mahoney by action of the local or not. He was one of the officers. Mr. Lee's action in tendering it back to Mr. Mahoney was never afterward brought before the local to my knowledge. In my hearing at the time it was tendered back, Mr. Mahoney did not tell Mr. Lee that if it was the desire of the local to return it that there was a way to do it. Mr. Mahoney, said, "I don't want it." (R. 408.)

JACOB OLIVER, a witness called on behalf of appellee, defendant below, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Jacob Oliver, and by profession I am a miner. I have lived in Butte thirty-one years, and most of that time I have been (R. 412) a member of the Butte Miners' Union, a corporation, defendant here. I was a member of the Butte Miners' Union prior to 1893. I became a member first in 1885. I recall the organization of the Western Federation of Miners.

Q. Mr. Oliver, prior to the Butte Miners' Union becoming a member of the local of the Western Federation of Miners, was there any argument or discussion as to what their rights, or what liabilities would be incurred by becoming a member?

A. There was considerable.

Q. Will you state what was done and what examination and investigation or understanding was had before the Butte Miners' Union voted to become a member of the Federation? (R. 413.)

A. In the Union Hall?

Q. That is what I mean. I don't mean anything on the sidewalk.

A. There were discussions for several meetings *pro* and *con*, as to the result of the Butte Union joining the Federation. In fact, I was one of the fellows who were opposed to the organization of the Western Federation, and I know—

A. (Continuing.) —and I know one of the points that was asked of the fellows, you might say the

opposition, was this: In case of trouble in the Coeur d'Alenes, there had been trouble over there, and our union was an incorporated body and the other unions were unincorporated, or voluntary associations, and there was any property destroyed or any lives lost, would we be held liable; and we were told frankly, no; and with that understanding we practically, well (R. 414), we were unanimous, finally, in joining the Federation.

The WITNESS.—I recollect when the charter was issued. I could not say exactly what it contained. I saw it hanging there on the wall.

Q. Did that charter that you received contain a forfeiture clause of the kind that is referred to in this second charter or put in the pleadings here?

A. Not to my knowledge.

The WITNESS.—I presume I read the charter lots of times, and I think I would have seen it if it were there. On the charter were a list of, I think, ten names taken from the old charter, or the original charter, members of the Butte Miners' Union; I think it was ten of the original names. I saw the last charter which was received, once.

Q. Did you observe at the time that you saw that (R. 415), that that was or it was not a duplicate of the former charter?

A. That was a very marked; the difference was very marked.

The WITNESS.—The difference was very marked, and anyone would notice the difference. My attention was called to the forfeiture clause in the last charter by, I don't know who, someone in the hall,

one night, and the question was brought up under the order of good and welfare, and I says, "I understood this matter was settled." Someone said, I can't say who, "Why, we can't accept this charter; it is out of the question. If we take this charter Moyer can come and grab our property any time." And I think it was Pat Leahy said, "We don't want this charter, and we don't have it, and we are not going to have it." The charter was never accepted or worked under.

Q. When you observed this charter, did that call your attention to this difference in the old charter as relating to the forfeiture of property?

A. Well, the most marked difference, of course, was the names. That would be the first thing a person would notice that had seen the old charter and the new, because you generally notice the names (R. 416) on a document of any kind; that is the first thing you notice is the signatures.

At this meeting in October, 1914, when the last charter was received, the members just passed it up, unanimously, that it could not be accepted. In fact, they hardly discussed it. I noticed one forcible remark made by Pat Leahy. He said, "We won't have it, and we ain't going to have it; we can't stand for anything like that." The reasons why it would not be accepted were discussed at that meeting, the forfeiture clause there which as Mr. Leahy said, "Why, Mr. Moyer can come here and grab the property, grab everything we got, if we don't comply with the rules and regulations," or something to that effect, "of the Western Federation." I had several

discussions with Mr. Mahoney in regard to the suit then pending in the court in the city of Butte here. (R. 417.)

The WITNESS.—At the time this Federation was organized in May, 1893, the Butte Miners' Union, this defendant, had property, and it consisted of the lot the hall was on, on North Main, and the loan of, I think, it was ten thousand dollars to Granite Miners' Union, and something like fifty or sixty thousand dollars in the bank. That property was accumulated from dues collected from the miners and members. The uses those dues were put to were to pay sick benefits, funeral expenses, and payment of the officers who conducted the affairs of the union. The money that built the hall, the first money, we got some money from W. A. Clark, he made us a loan to build the hall, but the money that paid for the hall came from the miners in shape of dues. The union owned a library at that time. The hall was not in the same condition it is now. It was a stone and brick building with offices and hall. It was considered one of the most substantial buildings in the city. It had two stores. I do not know the exact dimensions of it, nor could I tell exactly the width and length of it, but I think it was something like fifty-odd feet wide and a hundred and forty feet long; or somewhere about that; I don't know exactly. The Western Federation of Miners never contributed one dollar to the property now owned or possessed by the Butte Miners' Union, or being owned or possessed by it, since the birth of the (R. 418) Western Federation of Miners, to my knowledge. I was a pretty

regular attendant, and if they ever did, I should have heard of it.

Cross-examination by Mr. GEAGAN.

The WITNESS.—* * * When I spoke of Mr. Leahy having said something at a meeting of the Butte Miners' Union relative to the charter, I meant Pat Leahy, the policeman. Mr. Leahy said there was action taken by the union as an organization with relation to that charter that night that I speak of. To my knowledge, there was not. We never took a vote on it, to my recollection. I couldn't say there was or was not; but I know at this meeting when that question was brought up by Mr. Leahy, he says, "We have got through with that." That was Mr. Leahy's statement. I could not say whether there was any motion made and entertained or not, and I do not recollect whether there was at any time I was present at the union. I never heard any such motion discussed on the floor at any time while I was present at the meeting. At that meeting, if my memory serves me right, I was a little late when I came in, and there seemed to be a general understanding there that they refused the charter. Mr. Leahy made the most forcible remark. That was all that was done, I believe, at that meeting. (R. 420.)

Q. And at the time that Mr. Geagan refers to in reference to this second charter they sent in October, about the fifth or twelfth of October, the discussion that you had there was—were they discussing this forfeiture clause generally, not alone Mr. Leahy, but the members generally, at the time you referred to?

A. Well, it seemed to be the general understanding there. (R. 421.)

WILLIAM E. DEENEY, a witness called on behalf of defendant being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is William E. Deeney, and I am a stationary engineer. I came to Butte on the 10th day of January, 1885. In those days I was a miner and was mining in the Mat mine, at that time. I mined off and on for fifteen or sixteen years, at that time, sometimes for a company and sometimes for myself. I was a member of the Butte Miners' Union, a corporation, from four days after my arrival in Butte, and remained a member up to 1894 or 1895. I recall the time of the organization of the Western Federation of Miners, in May, 1913. I was a pretty regular attendant of the meetings of the Butte Miners' Union at that time, and I recall visiting the union during the time, visiting the Butte (R. 422) Miners' Union during the times that the Western Federation was in session and delegates forming the Federation. I heard discussions in the Butte Miners' Union as to the purposes and objects of the Federation, and explanations made by the delegates and members of the Butte Miners' Union during that time. During this time referred to, in the early part of May, 1893, I heard discussions as to under what terms and conditions the Butte Miners' Union would accept a charter with the Federation and become one of its mem-

bers. It was discussed for some time before they adopted the charter. The discussion at that time which was very heated on one or two occasions was that we gave no permission to the Western Federation to have any claim to the property, money, or anything belonging to the local here in Butte. At that time the Butte Miners' Union owned the Miners' Union Hall, which was destroyed recently; and they had made a loan to the Granite Mountain Miners' Union, they had organized; they had made a loan to the Coeur d'Alene country in 1892, and they had, I think, between eighty and fifty thousand dollars in the bank.

When we first agreed to become a local of the Western Federation of Miners, I examined the charter presented to the Butte Miners' Union for its acceptance. It was presented to the members sitting on the east side of the hall by a member visiting here, I think by the name of McCoy, and we looked it over. I remember I did. This was a draft, and this draft was discussed in the Union. This charter (R. 423) did not contain any forfeiture clause of the property.

I later saw the printed charter that was accepted by the union and hung on the wall. I think that was printed by Johnny Fogarty, who was then a member of the union, and was proprietor of the "By-Standard," a local paper here, and he asked, I believe, for the privilege of printing or doing that work at that time. There were a number of names on that charter, I don't know how many, the majority or nearly all of them are dead. The charter in size was about fourteen inches by twenty-two inches or

twenty-four inches, while I am not swearing to that, that is my recollection.

Q. Do you know whether or not this charter was examined for the purpose of preventing any forfeiture of the property or getting in any shape that would hold the property or the Butte Miners' Union liable?

A. That was the purport of the argument; that is what caused all the discussion, was to know whether it contained a clause of that kind or not, and on finding out that it contained no clause of that kind, I think you were the man that moved that it be (R. 424) adopted, without that clause being inserted; I am sure you are.

The WITNESS.—At that time I am sure there was no forfeiture clause of any property or any property of the union. That is what caused all the discussion. That was the draft. Afterward I looked at the print, and it was in accordance with the ruling of the draft. I examined the printed charter after to see if it was a correct reproduction of the draft. I remember on one occasion I had some misunderstanding with James C. Duffy, who was afterward secretary of the union in Granite Mountain, about a matter, and we traveled to the Hall and examined; and some others, and I examined it on several occasions. I mean when it was first presented, first accepted and hung up and framed. I examined it at that time and seen the printed form was the same. I am a member of the Western Federation at the present time, belonging to the Stationary Engineers,

83.

The WITNESS.—I know the purpose of organizing the Federation, the reason for organizing it. I know from prior discussions that the intention was that there should be one general organization of miners in the State of Montana and in the west, that there should be one constitution and be one initiation, and that on the payment of one dollar they could be (R. 425) transferred from one local to another. I have many times read the first constitution issued by the Federation of Miners.

Q. Did that constitution contain any forfeiture clause, or authorize the taking of the property of any withdrawing local from the Federation?

A. No, there was no clause of the kind to my knowledge in the Constitution—that is, the first constitution.

The WITNESS.— * * * The moneys and property of the Butte Miners' Union, a corporation, was accumulated by a dollar a month membership, by twenty-five cents per quarter and a dollar a year—I thought you asked about the Federation. The Butte Miners' Union paid a dollar a month. Further moneys were accumulated by picnics, by little entertainments, and by the renting out of the building and the hall after it was completed (R. 426). This money that was collected from those dues and from entertainments and rentals was to be used for the support of widows and orphans, burying the dead and paying sick benefits to those who were unable to support themselves and paying dues. The Butte Miners' Union, from the time that I became a member of it, paid out of this fund funeral expenses and sick

benefits for its members, and took care of orphans and widows of its members regularly. They purchased a library. During the time that I was a member of the Butte Miners' Union, after the organization of the Federation of Miners, the Western Federation of Miners never contributed one dollar or one cent in money, or did they contribute any other property to the Butte Miners' Union, a corporation.

Q. As a member of the Stationary Engineers and a local of the Western Federation of Miners, are you authorized to visit and allowed to attend meetings of the Butte Miners' Union? (R. 427.)

A. Yes, sir.

The WITNESS.—I am familiar with the business dealings between the Butte Miners' Union, a corporation, and the Western Federation of Miners, during the years that I have been a member of the Engineers' Local up to the time of the withdrawal of the Butte Miners' Union; been familiar with the relationship between them, and during the period of time last mentioned the Western Federation of Miners never contributed one cent or one dollar or any other kind of property to the Butte Miners' Union.

Q. Mr. Deeney, the plaintiffs in this action have alleged that they have brought suits in actions of law on behalf of the union. What do you know as to that?

A. I don't know that they ever paid for the fighting of any suits. (R. 428.)

The WITNESS.—This charter marked Defendant's Exhibit 3, the charter received by the Butte

Miners' Union on or about October 5, 1914, is not a duplicate of the charter received by the Butte Miners' Union on or about the 15th day of May, 1893; it is not a duplicate of the one that was destroyed. It varies and differs from the one that I first saw, the original draft, and later the printed form of, with reference to that clause as to the property rights and so forth. I can't exactly word it as it is there.

Q. Are there any of the names of the honorary roll on this charter that was just shown you?

A. I didn't notice the names; I just read the witnesses in the center of it. Mr. Moyer and Mr. Miller, yes.

There are no names of the old charter members of the Butte Miners' Union that were referred to by Mr. Oliver as the honorary roll. It is hard to recall the names of the men that were on there, it is a long time ago—John Eddy, one of the first members, and Bob Feltz, who was secretary in 1886—well, I forget the names of those who were on it. I would not attempt to testify to the names.

Cross-examination by Mr. HILTON.

The WITNESS.—I do not remember when the first convention organization of the Western Federation (R. 429) of Miners was dated. It might have been in the neighborhood of on or about the same time that I have testified that the Butte Miners' Union local obtained the charter, the 15th day of May. I believe it was exactly that day that the Western Federation of Miners was organized. I am not sure who was the first president of the organization. I think the name was Joe Thomas, but I am not sure.

I don't remember the name of the president of the original organization, the first organization of the Western Federation of Miners, but I think the name was Joe Thomas. The original issue of charters was made or had by the Western Federation of Miners at that time, after being thoroughly discussed in the neighborhood of May, 1893, and about the time when the Butte Miners' Union received their first charter. I do not remember how many charters were printed by order of the Federation at that time. I saw the draft of that charter that was ordered by that body. I believe the man who did the printing, John Fogarty, showed it to me. I would say that the original charter first issued by order of the Western Federation of Miners did not contain the forfeiture clause. I am speaking of the charter the Butte Miners' Union had and not charters in general. I do not remember who signed the first charter issued to the Butte Miners' Union as president and who as secretary. But I think I just stated I thought Joe Thomas was president. I have no recollection as to who was secretary. The charter that I saw in 1914 contained that (R. 430) clause that we objected to in 1893. The charter that was accepted in 1893, there was a heated discussion on one or two occasions about adopting it as presented by that committee from the convention, and by eliminating that clause it was adopted. I do not know that I ever saw any record of that action, but I should think that there was some made of it. There is nothing of record in existence now that I know of that would show what the action of the local was in the

adoption of that charter. There is nothing of record that I know of on the part of the Butte Miners' Local repudiating the last charter of 1914. I don't know of any of the documents that now remain. I was present at a time when a discussion was had when that was objected to because it did not conform to the other one and the action taken was that the local would not accept it as presented with that clause in it, the charter with reference to the forfeiture. That was in 1893, and I think it was in May, or the latter end of April. I think the result of their action was made a matter of record, but I am not sure. There was a motion made by Mr. Breen, who was then a member, that the charter be received by eliminating that clause, and it was seconded, I think, by a man named Michael—I am not sure—McLeod, and action taken that it be adopted by eliminating that clause. I think that was made a matter of record. Yes, it was a matter of consequence, and it would be.

Redirect Examination by Mr. BREEN.

The WITNESS.—I do not know what has become (R. 431) of the records of the Butte Miners' Union that were in existence and used at the time I referred to in 1893, since its birth, except by hearsay. I don't know what happened to it. I understand they were all destroyed on the 13th of June, 1914, or the major portion of them.

FRANK O'CONNOR, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Frank O'Connor, and I have resided in Butte about twenty-seven years.

I am a miner, and have been a member of the Butte Miners' Union. I joined the defendant, the Butte Miners' Union, in the month of February, 1891, and was a member of the Butte Miners' Union in 1893, during the spring months. I have held the offices of secretary, president, treasurer and several other offices in the Butte Miners' Union. I was president four or five terms, I believe. I could not tell you just exactly, because on account of resigning as president I would not be able to tell you the correct date. I was a member of the Butte Miners' Union, this defendant, at the time of the formation of the Western Federation of Miners.

Q. Were you present at any meetings when any question of organizing the Federation or becoming a local of the Federation, prior to the 15th day of May, 1913? (R. 432.)

A. Yes, I was at the meetings, but I couldn't swear that I remember anything just what happened. I was at the meetings, any number of them.

I was a regular attendant at the meetings when my shift was such that I could attend.

Q. And was this matter of becoming a local of the Federation ever discussed while you were present prior to May 15, or on or about May 15, 1913?

A. I would swear that I heard it discussed, but then I could not give any day or date for it.

It was the regular discussion at the meetings, I know, but I could not give the dates. I have seen the charter received from the Western Federation accepted by the defendant, the Butte Miners' Union,

bearing date of May 15, 1893, the first charter, and have examined it.

Q. Describe it as far as you can generally; I mean describe, that is as far as contents and what was on the face of it, as far as you can, generally.

A. From the discussion that came up at the meetings on the charter, I have formed my opinion—

Q. Well, from what you seen, I mean.

A. Yes,—

Q. Well, tell us what that was. What did the charter provide, do you understand me?

A. I do, yes.

The COURT.—Well, let him take this Aspen charter and read it over and tell us what difference there was.

A. I will answer the question, if your Honor (R. 433) please, on them grounds. When the new charter came in, that is the time I offered my objections to this charter, that is, the new charter.

Q. I don't mean the new charter. The one I am talking about is the old one, the first charter received, that was in use until destroyed on the 13th of June, 1914; the old charter and not the new one, do you understand me?

A. I do. I seen the charter and read it over.

The WITNESS.—It did not contain a forfeiture clause of the property of the Butte Miners' Union. I recall the Butte Miners' Union, this defendant, applying for a reissuance of this charter that was destroyed on June 13, 1914. I was in there I believe, when it was taken up there. I recall the arrival of the charter that came about that request. This char-

ter that was received some time in the early part or the middle part of October, 1914, was not a duplicate or reissuance of the charter that had been destroyed and that had hung for years on the wall. It differed in that they controlled the whole property; they would take all our property; that is, they would take the Butte Miners' Union property under the clause they had in here, by accepting the charter they would take all our property and we objected to it.

Q. Was this charter that arrived in October, 1914, ever accepted by the Butte Miners' Union, the defendant here? (R. 434.)

A. I was not at the meeting that it was accepted or rejected, but we objected to it before the meeting. The charter was not brought before the meeting at any time I was present and any attention called to it or any discussion had on it as I remember; not at a meeting, but it was called to our attention outside, before the meeting. At that time some of the members that were there talked it over and said, "That charter is no good," and said not to accept it.

Q. What action was taken if any that you know of at the meeting? A. I was not at the meeting.

Q. I mean at a session of the Butte Miners' Union?

A. Well I was not at the meeting that it was rejected.

Q. Well, what do you mean when you say, "rejected?"

A. Well, it was rejected before it went to the meeting.

We rejected it before it went to the meeting. I was not at the meeting it was taken up. When the

charter came it was read over and I think Mr. Leahy and some of them objected to the clause in it, and we decided that we would not accept it, that is, not at the meeting, but outside of the meeting. That (R. 435) was some time prior to the meeting night. I do not know what was done at the regular meeting night.

During the time that I was a member of the Butte Miners' Union here, prior to 1893, the Butte Miners' Union had a constitution and by-laws. There ought to be some of those constitutions in existence now; I might have one home myself; I believe I have of 1893, but maybe not.

Q. Do you know whether or not there are any of them preserved by the Butte Miners' Union, the defendant here, or any of them saved out of the wreck of 1914, June 13th?

A. I don't know that I have; I might have one.

The COURT.—You are asked whether or not you know if the Union has preserved any or not.

A. The Union has not preserved any.

Q. Do you recall whether or not there was a provision in the constitution in use in 1893, the constitution of the Butte Miners' Union, the defendant here, providing for the payment of funeral expenses and sick benefits and the care of dependent ones of deceased members?

A. During the time that I have been secretary there was a standing offer that no member would have to be buried in a pauper's grave.

The WITNESS.—There was a provision in the constitution providing for a certain amount each

week during sickness, and a certain amount for funeral expenses, and so on. That provision remained during the time that this Butte Miners' Union was a member of the Western Federation of Miners after 1893, up to the 13th of June, and later there have been funeral benefits paid. I mean the 13th of June, 1914, the destruction of the hall. The Butte Miners' Union, a corporation, the defendant here owned property in 1893 and that consisted of their hall; they loaned money to the Granite Miners' Union, also a corporation; and they loaned to the Black Hills—I could not answer prior to the Federation, the organizing and joining the Federation. They did have property prior to 1893. They owned the hall and they owned money besides, and it was, I believe, in the Clark's bank at the time. (R. 437.)

PAT LEAHY, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Pat Leahy, and I have been a resident of Butte nineteen years and a half. I have been a miner ever since I have been here except for the last six or seven months. I have been a member of the Butte Miners' Union and was a member of the Butte Miners' Union during the year 1914, and have been such member since October, 1896. I did not during the time I was a member of the Butte Miners' Union observe or examine the charter of the Butte Miners' Union received from the Western Federation of Miners during the month of May, 1893, because I was not a member then, but did ex-

amine it since I have been a member. The charter that I now refer to did not contain a forfeiture clause of the property in case of a withdrawal, suspension or dissolution. I guess that charter that was received in 1893, was blown to —, or some other foreign country, wherever it went, I don't know, but the hall was blown up. I never saw it after the 13th of June. I was present when an application was made for a reissuance of that charter. I read the charter that came in response to that request and told the boys that it would not be advisable to accept because there was a clause in it that did not suit me, and that changed the intent and purposes of the former charter. Defendant's Exhibit 3 is the one. There were other differences besides the forfeiture (R. 441) clause referred to in this charter, Defendant's Exhibit 3, and the charter that had been hanging on the wall. There was only the names of Mr. Mills and Mr. Moyer on the new charter and there were the names of about twenty, I believe, charter members of the Butte Miners' Union, No. 1 on the previous one.

Q. When you say "charter members," do you mean charter members of the original organization?

A. Yes, sir.

Q. Or members of the other Federation?

A. No, I mean the original.

The WITNESS.—Defendant's Exhibit 3 arrived in Butte sometime in October, 1914. There was a bunch present when it was opened and examined. I forget their names now; couldn't recall their names; quite a bunch in the room before we went to the meeting.

Q. What was done at the meeting, or was this charter taken up at the meeting?

A. I made a little talk about this proposition of the charter and said how it read, "Well," they said, "it ain't worth making a motion about it." (R. 442.) That was in our meeting hall, North Main, during the meeting.

Q. What was the discussion with regard to the forfeiture of the Miners' Union Property by the terms of the charter that meeting that you refer to?

A. Well, they were holding the property,—

Q. Well, I asked you if there was a discussion, if the contents of the charter was discussed?

A. No, they said it was not worth discussing. I don't know who said it was worth discussing; some of the boys that were there, I don't recall now; couldn't recall his name, but some of the boys that were there at the meeting. At that time they threw it in the waste-basket, because the charter read that the W. F. of M. was to take our property, money, and everything belonging to the local here, under the conditions of the charter, I guess, providing that we did not suit them. The charter received did not comply with the request for a charter. They read the charter previous to the meeting in the assembly-room, read it over, and I says, "Boys, here we go; if we will accept this charter." So when I brought it up at the meeting in talking about it, they said, "Don't waste your time," under the head of Good and Welfare of the meeting, and when I brought up this matter they said, "Throw it in the waste-basket." The sum and substance of the charter was to take away all our

property and money, and everything belonging to us and ours.

Q. Well, did you or did the Butte Miners' Union (R. 443), a corporation, receive any correspondence, or were they in any manner recognized, or receive any quarterly reports from the Western Federation of Miners, after this month of October, 1914?

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr. O'Neill, except by lawsuits since the date of that letter?

A. No, sir.

Cross-examination by Mr. GEAGAN.

The WITNESS.—I have never before seen Plaintiff's Exhibit "D" in this case, which you have handed me for inspection. I have examined it. It is not similar to the original charter of the Butte Miners' Union received in 1893. There is a good deal of difference there that I would have to go through. It differs in this respect: "It is hereby agreed in acceptance of this charter that the aforesaid union shall (R. 444) conform to the terms, rules and regulations, and in default thereof this charter may be revoked." That was not in the old one. With the exception of that it is the same as the old one, in the body of the charter, but in the old one, the names of the members, the charter members; in our old charter, the names of the charter members were in it right underneath the charter members. I could not say that the names underneath were the same as the names underneath on this one; I couldn't give you the names that were there. That charter was

signed by John Gilligan and W. J. Weeks, as president and secretary, but that is the Aspen charter of Colorado, and our charter belonging to Butte, Montana.

Q. The Aspen one was one of the original ones of the Federation, was it not?

A. I didn't look it over that close.

Q. Then you don't know whether that was or not, do you?

A. Well, it was the Aspen Miners' Union, certainly it was a local.

It was some meeting in October, 1914, I couldn't exactly tell you, that this charter was thrown in the waste-basket. It was not thrown in the waste-basket till after when we offered it to Mr. Mahoney and he would not take it. That was not at a meeting. To the best of my recollection I believe it was Mr. Lee who threw it in the waste-basket. I could not exactly say that I attended all the meetings during the fall and winter of 1914, and spring of 1915, of the Butte Miners' Union, but attended quite regularly, I was (R. 445) a regular member and took an active interest. I was elected an officer during the year 1915.

Q. Now, at any of the meetings you attended during 1914 and 1915, after the receiving of this charter, was there any action taken at the meeting rejecting this charter?

A. Well, they would not even take it into consideration after reading it?

Q. Will you please answer my question? (Question read.) A. Yes, there was, sir.

That was at a meeting some time in October, but I

could not exactly tell the date of the meeting. At that meeting I talked the charter, and they said, "It ain't worth talking about. Throw it in the waste-basket." I don't know who said that; some of the boys that were present in the hall; members. That was at a meeting, but I don't know who were present at that meeting; I couldn't say who were present. I am not taking a memorandum of everybody that were present at the meeting. I don't think there was any motion made with regard to the rejecting of it. It was just simply the expression of somebody present to that effect, to throw it in the waste-basket. They didn't think it was worth a motion. The remark that I have stated to you was merely the expression of everybody present at the meeting; everybody present said that, and they were members of the Butte Miners' Union. I could not tell you who they were, as I told you previous to this. They all expressed their opinion at once. All at once said, "Throw it in the waste-basket." There was no action at any other (R. 446) meeting at which I was present with regard to this charter in 1914 and 1915. In 1914 or 1915, but I couldn't recall the date of the meeting, a written communication was ordered forwarded to the Federation, with regard to this charter, at which meeting I was present. I could not recall the man who made that motion. It was a motion that they would not accept it. I don't know who made the motion. I don't know whether such a resolution was ever sent. I wasn't the secretary. I would not positively state whether that resolution was in the form of a written resolution or an oral

resolution, and I don't know who made it. That was after the waste-basket incident. The waste-basket incident that I now refer to was at the time it was handed to Mr. Mahoney. The tender to Mr. Mahoney was made in the office of the organization, Butte Miners' Union, in the office of the anteroom of the Butte Miners' Union. I couldn't state for sure who were present. I know Mr. Lee was the man who handed it to Mr. Mahoney, and he wouldn't take it. That was not at a regular meeting of the Union.

Redirect Examination by Mr. BREEN.

Q. At the time that this reference was made that it was not worth considering, was there any statement made as to why it was not worth considering?

Mr. GEAGAN.—We object to that as repetition, having been gone into on direct examination, leading, and suggestive.

Which objection was by the Court overruled, to (R. 447) which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Because we had read in the charter that all moneys and properties belonging to the local was to become the property of the W. F. of M. and there was only two names signed to it, that is, the secretary and president of the W. F. of M.

Q. Your attention was called to this Aspen charter, known as Plaintiffs' Exhibit "D," and Mr. Geagan asked you if it was similar, and you read, "further agree that should the aforesaid union—further it is agreed that should the aforesaid union withdraw, or be dissolved, suspended or forfeit this charter, then the property, moneys, books and papers shall become

the property of the Western Federation of miners.” Was that in the original charter that was lost or destroyed June 13th, 1914? A. No, sir.

Q. Then when Mr. Geagan asked you if, ending at the words “Western Federation of Miners,” if it was similar in other respects, did you mean to give the Court the impression that the forfeiture clause that was not read at the time, was in the old charter?

A. No, sir.

(Witness excused.) (R. 448.)

JAMES J. MAHER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—On the first day of September, 1896, I became an officer in the Western Federation (R. 456) of Miners. Charters were issued during my term of office. There were a number of our charters, the Western Federation of Miners charters, returned for certain reasons. Some of the locals went out of existence, and some became dissatisfied. The Granite Mountain Union withdrew from the Western Federation of Miners, the Western Federation of Miners did not attempt to claim to own or control or secure possession of its property; they did not do anything about it.

Q. At that time the Granite Mountain Miners' Union owned a large hall and considerable property, did it not? A. Yes, sir.

The WITNESS.—There was no claim made as to the ownership of any property owned by any local that withdrew from the Western Federation of

Miners during my term of office. There was scarcely any property in any local that became defunct, outside of the Granite Mountain property. Other property was just the charter and rituals and books. Outside of that no property was returned. I was an officer from September 1st, 1896, to June 1st, 1901. (R. 457.)

Cross-examination by Mr. GEAGAN.

The WITNESS.—Those books was all the property the other unions had, outside of the Granite Mountain. The Federation never brought any action against the Granite Mountain. I do not say that the charter of the Granite Mountain Union did not provide for the forfeiture of its property or the turning over of the property. They returned the charter and everything belonging to the Federation, I don't know whether it contained that same clause or not. They returned the charter as it was and I did not look it over. It was the same charter as the other; the same as the Aspen charter. (R. 458.)

PAT LEE, called as a witness on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The witness testified in relation to a petition circulated among the other local organizations of the appellant, Western Federation of Miners, to wit, praying for the recall of appellants Moyer and Miller and executive board member, Lowney (R. 459), and in relation to a circular letter in relation to said petition by the appellant, Charles H. Moyer. (R. 460, 461, 462.) Further testifying to a suit brought

against appellee by appellants, Western Federation of Miners, Charles H. Moyer, Guy E. Miller and One Other, Ed O'Byrne, Plaintiffs, vs. Martin Seahill, Patrick Lee, Patrick O'Neill, Mike A. Sullivan, James Ryan, James Walsh and Patrick Quigley, Defendants (R. 95-110), and the answer to same (R. 110-124), and further testified as follows:

Q. Was it ever, in your presence, tendered to Mr. Mahoney? (R. 463.) A. Yes, sir. (R. 464.)

Cross-examination by Mr. HILTON.

The WITNESS.—* * * As soon as I received that charter, I was aware that it did not conform to the old charter. The last charter was the charter which was tendered by me to Mr. Mahoney. That was not in the month of October, but it might be in December or January. (R. 464.) After the receipt of the charter I immediately was aware that it contained a provision that the original charter did not contain. We still continued to act with the Federation officials after I discovered that fact, because they sent in their blanks and I sent in the report for the month of October. After I determined that there was this error or misapprehension, whatever I might call it, in the issuance of the charter, we were working under the old charter. We wanted a copy of the old charter back again. When we did not receive that we still continued our official relations with the Federation after we discovered that the last charter was all we had, for about a month or maybe less. (R. 465.)

Redirect Examination by Mr. BREEN.

The WITNESS.—I recall the letter I wrote to

Mr. Mills on November 24th, 1914. In that letter I notified him that the charter was not satisfactory. I stated to Judge Hilton that we continued to work under that charter. We had been working under that charter from the date of its destruction right along. There was a reason why the Butte Miners' Union did not withdraw formally from the Western Federation of Miners prior to the date of withdrawing. I think it was some time in January that we wanted to withdraw, but our local officers advised not withdrawing while the suit was pending. (R. 470.) We had taken legal advice as to withdrawing, early in January, and were advised not to until the suit was determined. (R. 471.)

Appellee, defendant in the lower court, then announced that it had no further testimony to offer, whereupon appellants called the following witnesses in rebuttal.

CHARLES E. MAHONEY, a witness heretofore on the stand, being recalled by plaintiff in rebuttal, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—I am the same witness who was on the stand yesterday in this case. I was in the courtroom during the giving of testimony by members Lee, Leahy, O'Connor and Oliver, and heard the testimony of those gentlemen with regard to the handing of a charter to me. That is the charter in question here of October date. At that time I informed them that all matters should be sent to the International Office of the Western Federation of

Miners. I have been a member of The Butte Miners' Union for several years. (R. 473.)

Q. Did you ever see the original charter of the Butte Miners' Union in the Western Federation of Miners issued in 1893? A. Yes, sir. (R. 474.)

Q. Do you know whether or not that charter contained the clause that is in the charter of October, 1914, with relation to the money, books and property of the Butte Union? Calling your attention to Defendant's Exhibit 3, which is the October charter, and the clause therein relating to what should become of the property in the event of withdrawal, suspension and so forth.

A. The contracts in both charters were identical. The contracts in the two charters are identical, the one previously destroyed in the wrecking of the hall, and this charter here; that is the wording of them.

Cross-examination by Mr. BREEN.

The WITNESS.—I think it was in the early part of 1912 that I became a member of the Butte Miners' Union. (R. 474.)

PATRICK MEANEY, a witness called on behalf of plaintiffs in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—My name is Patrick Meaney, and I reside in Butte, having resided here thirty-seven years. I became an active member of the Butte Miners' Union, in April, 1895, and contributed towards the first money that was raised to build the present Miners' Union Hall, in 1881. I was em-

ployed at the Star West. I was acquainted with the original charter that was issued to the Butte Miners' Union by the Western Federation of Miners, in 1893, and saw it there hanging up on the wall, all the time after, and numerous times after that. I read it. There was a clause in the original charter as originally issued to the Butte Miners' Union providing that in the event of withdrawal or suspension or for the other causes named therein there was to be a change of the ownership of property, or that the property was to become the property of the Western Federation of Miners. In the old charter of the Butte Miners' Union there was a provision that if the charter should be revoked or the union should withdraw or be suspended from the Western Federation of Miners, that the property would revert to the Western Federation of Miners, and that was the general understanding when the Western Federation of Miners was formed. That provision was in the (R. 475) original charter that I saw in the Butte Miners' Union Hall, the one that was issued in 1893. The organization was formed in the Miners' Union Hall, in Butte, in the month of May, 1893. The Butte Miners' Union issued the call for it, and Mr. Breen made the motion appointing a committee of five of the Butte Miners' Union, which constituted Tom Nolan, Charles O'Brien, William McLean and John Gilligan. They communicated with the various miners' unions throughout the west, for the purpose of meeting in Butte some time in the middle of May, I have forgotten the exact date, for the purpose of forming a western miners' organiza-

tion or a miners' organization of the west. They had not determined the name of it.

Cross-examination by Mr. BREEN.

The WITNESS.—I first became a member of the Butte Miners' Union, an active member, in January, 1895, and by "active member" I mean a dues paying member. Prior to that time I had not (R. 476) been recognized as a member of the Butte Miners' Union, but I was president of the Workingmen's Union. I did not attend the meetings of the Butte Miners' Union, and was not a member, and did not pretend to join an organization that I did not consider I was following the vocation of its members, and I should not be admitted as a *bona fide* member like others did. The time I became a member was approximately two years after the organization of the Western Federation of Miners.

I know that you made the motion appointing the committee, because we had the people's headquarters, and it was your object to become the first president of the Western Federation of Miners, but we saw to it, as members of the people's party, that we had enough men there in the Miners' Union Hall to not allow you even to attend the first convention and that you were not even elected as a delegate. You tried to be president of everything that came up from a labor standpoint in the State at that time. At that time the Butte Miners' Union had property as also did the Granite Mountain.

After I joined the Butte Miners' Union in 1895 I went to Helena, but not necessarily to run for State

Senator. Since that time I have never been a member of the Butte Miners' Union. I did not go to work at that time in the Original Mine for the period of one day, for the purpose of joining the Butte Miners' Union. At the present time I live in Butte on Ohio Street, and my business is mining, out in Jefferson County. I have some claims out there. I have lived in Butte all winter. Mining is my business.

I went in the Butte Miners' Union Hall and saw the charter the day it was hung up, or the day after; I don't recall the date; it was after it was hung up. I was president of the Workingmen's Union and I was secretary of the Labor Temple, and that occupied three nights out of each week during several years, and I had access to all of the charters, and I read all of them, and made it my business to read them. When this charter was hung up it was framed, and had a glass front. I don't recall any drapery being on it. This charter which was hanging up contained five names, Joe Poynton, Bill Cunningham, but the others I cannot recall. There was John Gilligan, President and W. J. Weeks, Secretary. Poynton's name was afterward stricken from the charter. I do not recall John Eddy's name being on that charter, neither do I recall Pat Colm's nor Frank Shovlin. I read that charter after it was hung in the hall. My business took me in there most every day. It is not a fact that I am appearing as a witness in this case because of my feeling against Mr. Breen. (R. 478.)

J. C. LOWNEY, a witness called on behalf of plaintiff, in rebuttal being duly sworn, testified as follows:

Direct Examination by Mr. HILTON.

The WITNESS.—My name is J. C. Lowney, and I reside in Butte, having resided here twenty-seven years. I am not a member of the defendant corporation. I am a member of the Western Federation of Miners, and have been a member of that organization since it was organized in 1893, and occupied the official position in that order of member of the executive board. I was in Butte in 1893, during the fall of that year and during the spring of that year. I was familiar with the original charter issued by the executive board of the Western Federation of Miners in convention assembled in May or June of 1893, delivered to and used by the Butte Miners' local. I saw it first hanging up in the hall on the north side of the Miners' Union Hall, and had occasion to inspect it several times as a member of that organization. I was acquainted afterward with a new charter under date of October 3d, 1914, that was sent to the local organization. Those two instruments were identical in form, in substance. The clause was identical and alike that provided in each for the forfeiture of the property and money of the local organization in case they became defunct and went out of business. (R. 569.)

Cross-examination by Mr. BREEN.

The WITNESS.—I said I was a member of the Butte Miners' Union in May, 1893. I am not acquainted with the fact that Charles O'Brien, a

former member, now deceased, opposed having anything to do with any organization that would call for a forfeiture of any property, and that the union unanimously refused to have anything to do with a central organization that would confiscate their property if they were dissatisfied with the way things went, and that it went on for some time, this discussion. I am not acquainted with that fact. I am a member of the executive board and have been since June, 1906, and have been on a salary practically ever since.

Q. Do you remember a convention of the Western Federation of Miners in Denver, when everybody but yourself, or when you were the (R. 570) contesting delegate, you and Mr. Duffy, and when you were seated the Butte delegation withdrew and returned to Butte?

A. Yes, sir. I did not at that time examine that charter at the request of Mr. Moyer, and consult counsel to see if the union could not be suspended, and the property confiscated. I never met Mr. Moyer for two years after that. I do not know of my own knowledge of Mr. Moyer's taking such action. I KNOW THAT JOHN H. MURPHY, I WAS INFORMED OF THAT MATTER, JOHN H. MURPHY, a FEDERATION ATTORNEY, DREW SOME PROCESS, WHICH WAS FURNISHED YOU ON SUCH MATTER, A GENERAL BRIEF. I DO NOT REMEMBER YOU MAKING THE ANSWER, "FORGET IT," THAT I DIDN'T HAVE A CHANCE, BECAUSE YOU RETAINED THE BRIEF AND HELD

ON TO IT. THIS BRIEF WAS ABOUT THE RIGHT OF GENERAL ORGANIZATIONS TO SUBORDINATE LODGES, AND QUOTED AUTHORITIES THROUGHOUT THE COUNTRY. I do not recall that Mr. Murphy's brief requested you to investigate that and see if the property could not be taken. I will state in answer to my statement that the Butte Miners' Union immediately sent another delegation to replace the delegation that bolted, and that was the next week. I DON'T RECOLLECT THAT THIS ACTION THAT I REFERRED TO BEING TAKEN BY A LEGAL REPRESENTATIVE WAS IMMEDIATELY AFTER THIS BOLT. I KNOW THAT YOU WERE FURNISHED A BRIEF PROBABLY A YEAR LATER, SOME TIME LATER, BY JOHN H. MURPHY. I did not see your answer; never got any answer from you that I remember.

Redirect Examination by MR. HILTON.

The WITNESS.—During the time that counsel (R. 571) has interrogated me concerning an interview which I might have had with Mr. Moyer, Mr. Moyer was in jail.

(Witness excused.) (R. 572.)

The above contains practically all of the testimony produced in the trial court in so far as it relates to the wording of the charter of May 15, 1893, and the rejection by appellee of the charter of October, 1914. At this time we desire to call the Court's attention to the peculiar fact that the appellants did not ask the witness Mr. Mahoney when first on the stand about the alleged forfeiture clause in the charter of

May 15, 1893, and neglected to call the witnesses, Mr. Meaney and Mr. Lowney until they were produced in rebuttal.

It will be observed that Mr. Mahoney testified that he became a member of appellee in the early part of the year 1912, a period of about nineteen years after the birth of the appellant, Western Federation of Miners.

Appellants then called Mr. Lowney and Mr. Meaney, Mr. Lowney stating that he was familiar with the reading of the original charter, and that it contained the forfeiture clause in question. On cross-examination he admitted that the delegates from the defendant corporation (appellee here) had withdrawn from the convention of the plaintiff, Western Federation of Miners (one of the appellants) held in the City of Denver, Colorado, in 1906, and that a short time thereafter the Federation had instructed its then attorney, John Murphy of Denver, to look into the matter of whether or not the Federation could get control of the property of this appellee, provided it should suspend appellee (defendant below), and that the said attorney had briefed the matter and had sent the brief in question to an attorney of Butte, Montana (appellee's present counsel) for the further purpose of investigating or proceeding further. He further testified that he did not know what advice or information Mr. Murphy had received from myself. It appearing from the said testimony that defendant's and appellees' present attorney was consulted in relation to that matter, it placed and still places the said attorney in a rather embarrassing

position as it shows that at some period of time between the years 1906 and 1908 the relation of attorney and client existed between a portion of the present appellants, and defendant and appellee's present counsel at that time and for the very purpose of this suit, which being a confidential relation precluded counsel from being a witness in the case below, and embarrasses him in arguing, not only the testimony of the witness, Mr. Lowney, but Mr. Meaney as well. Mr. Meaney testified that he had lived a long time in Butte; that he did not become a member of the defendant corporation (appellee here) for approximately one year and eight months after it became a local of the appellant, Western Federation of Miners, but he did know that the charter of May, 1893, contained forfeiture clause in question because (from the outside) he had taken an active part in the election of delegates to that convention for the purpose of thwarting the wishes or ambition of one of the then members of defendant corporation (appellee here), and was sure that he had read the charter in question, either the day on which it was framed and hung up or the day after. That by hearsay he knew all of the proceedings in relation to the election or appointment of delegates who made the motions relative thereto, and had packed the meeting for that purpose; that about one year and eight months hereafter he became a member of this defendant corporation (appellee here); that he had remained a member for a few months and then removed to Helena; that the then member and person he was opposed to is appellee's attorney in this action. For the reasons

above stated counsel does not care to comment on the testimony of the last-named witness, but in view of all of the testimony and all of the facts and circumstances appearing in the case, we submit to the candid consideration of this Court, does it look reasonable that defendant corporation (appellee here) as shown by the record, predating its birth as an industrial organization for a period of approximately fifteen years; twelve years of which time it was organized and doing business as a corporation under the Laws of the State of Montana; that it, as shown by the record, in conjunction with other unions of the State of Montana, which it had organized by sending its officers out for that purpose, and unions from Idaho, Colorado and South Dakota met for the purpose of creating the appellant, Western Federation of Miners, and that the said appellant owes its existence to appellee not the contrary, and that if appellee chose to occupy a subordinate position after said creation, it was purely a voluntary one. And we further submit to the Court that to say the least it is incredible to believe that appellee intended to put itself in a position whereby it could be deprived of approximately \$100,000 of property by the creature it created at any time the said creature saw fit to suspend it and demand the said property. It appears from the record that the original charter and all the books and records of defendant (appellee here) were stolen and destroyed on June 13, 1914, thereby preventing this appellee from producing the records as evidence in this case at the trial in the lower court. Appellee further submits that in view of the fact that

appellant, Western Federation of Miners in 1906, employed and instructed counsel to investigate the chances of getting possession of the then property of this appellee; appellee submits that the Court would not be indulging in a violent presumption if it took the position that if the records of defendant in the lower court (appellee here) showed conditions such as described by the witness, Mr. Lowney, and the hearsay testimony of Mr. Meaney, and the charter in question contained the said forfeiture clause, and its books of record, a record of the proceedings relating to the acceptance of the said charter along the lines testified to by plaintiffs (appellants here) that an attempt would have been made approximately ten years earlier to get possession of appellee's property. Again it appears from the record how and for what purpose the property in question was accumulated. Such being the case what would defendant gain by taking a chance on giving it away.

Appellee insists that there is no evidence whatever that would warrant a belief that the charter bearing date of October 3, 1914, was a duplicate or a reissuance of the original charter. Appellants claim that the body of the charter is the same, but admits that the names contained upon the charter of 1893 were not upon the charter of October 3, 1914, but that in all other respects they claim the body of the charters are the same. If the charter bearing date May 15, 1893, was similar to other charters issued shortly thereafter and upon which the lower court commented upon in its decision, why was it that appellant, Mr. Mills found it necessary to ask for the names of at least ten

charter members who were on the first charter for the purpose of placing them upon the 1914 charter, instead of taking them off of the Aspen Charter, or any of the other charters first issued. Why is it that all the witnesses who appeared in the lower court and testified in behalf of appellee immediately noticed the difference and refused to accept the said charter. Without further comment upon the testimony in relation to the matters above referred to, we respectfully submit to this Court that the Trial Court heard all of the testimony offered at the said trial; personally knew the witnesses; observed their conduct and demeanor upon the stand; took notice of their interest or lack of interest in the outcome of the said trial and after carefully considering all of the facts and circumstances in relation thereto, decided this case on every point in favor of the appellee. (R. 296-302.)

AS TO THE LAW IN MORE DETAIL.

While positively denying the acceptance of the charter bearing date of October, 1914, and positively denying the existence of a forfeiture clause in the original charter of May 15, 1893, appellee for the sake of argument says: That even if all that appellants claim was contained therein (in the said charters above referred to), that the same would not in any manner help appellants' claim for the reason that such a contract would be contrary to law; contrary to public policy and therefore, void, and that the property of appellee could not be taken by reason thereof.

The Revised Statutes of 1879, and the amendments thereto, *supra*, and section 3883 and section 3889 as

amended by the 14th Legislative Assembly, 117; section 3890 and section 5051, Revised Codes of Montana (*ante*) and appellee's Articles of Incorporation, *supra*, clearly defines what appellee could, and can legally do. If it attempted to dispose of its property in the manner claimed by appellants, such action would be contrary to the laws of its creation. A contract of the character set forth in the complaint of appellants would not be binding for the reason that it would be depriving a corporation of possession, control, and ownership of its property without due process of law, and would be substituting the self-serving laws of a nonresident, unincorporated, voluntary association of persons whose membership (except its officers) is always changing to the laws of the state creating it, and for the further reason that a corporation cannot subject itself, its property or its members to an authority existing outside of, or beyond the control of the state creating it. To do so in this instance would incapacitate appellee from performing the very duty for which it was created. If such a claim was recognized by this Court, or by the Trial Court, and a judgment and decree handed down giving to appellants the said property of appellee herein, appellee after more than thirty-six years of struggle would be left without a dollar with which to carry on the objects of its creation.

The laws of the State of Montana, provide how the property of defendant could be, and can be acquired, held and disposed of; the Constitution of the Western Federation of Miners, section 1, article 6, provides, that its revenue shall be derived from charter

fees, per capita tax, and in case of emergency, such assessments as in the judgment of the executive board of convention may be necessary. (R. 385.) Any other method of collecting said revenues would be unconstitutional, and therefore, void. Section 3, article 1 shows that if twenty or more persons desire a charter they must be self-supporting (R. 372); section 4, article 15, Constitution of the Western Federation of Miners states what shall become of the property of defunct unions (R. 398), but nowhere do we find within the said constitution (R. 370-406) any section, sentence or clause providing for the taking of property from withdrawing unions. From all that is above stated, appellee claims that neither as a corporation, acting through its chosen officers, nor even with the unanimous consent of its members, could it enter into a contract of the character alleged. The said contract being beyond the scope of its powers as a corporation, and would be without any binding force or effect whatever.

We will now call the Court's attention to the following sections of the Revised Codes of Montana, relating to the general powers of corporations as applicable to the case now before the Court.

3833. HOW MANY AND WHO TO BE DIRECTORS.—The corporate powers, business and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except

those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of the director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the Board.

3889. **POWERS OF CORPORATIONS.**—Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

2. To sue, and be sued, in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes with such designation, preferences and voting powers, or restrictions or qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock

certificate thereof; and the holder thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate not exceeding eight per centum, payable quarterly, semi-annually, or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulate. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. (Amendment approved March 5, 1915; Laws 1915, p. 117.)

3890. **LIMITATION OF POWERS.**—In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

5051. **WHAT IS UNLAWFUL.**—That is not lawful which is:

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

We now call the Court's attention briefly to the authorities governing benevolent, fraternal and industrial organizations. In so doing the writer of this brief desires to respectfully state to the Court that he, personally, has a very high opinion of the decisions of our courts of long ago, and while it may be urged by appellants that some of them relate to the distant past, we still respectfully claim, that the question here in dispute has long since been settled so thoroughly by learned courts, that it is only when new questions arise that courts of later date have been called to pass upon it.

One of the earliest cases that we have been able to find was submitted to the Court of Appeals of Mary-

land, and the opinion filed therein on March 11, 1886. The case grew out of a dispute that arose between a benevolent association composed of Jewish persons and entitled "District Grand Lodge, No. 51, Independent Order of B'Nai B'Rith v. Jedidjah Lodge, No. 5, Independent Order of B'Nai B'Rith." 3 Atlantic Report. 104-108.

In many respects the case in question is similar to the one at bar for the reason that the defendant lodge was the oldest primary lodge in the State of Maryland. Was in 1852 duly incorporated under the laws of said State. Thereafter in 1870, the plaintiff was incorporated under the laws of said State. The defendant controlled its own property, as in this case, for a long period of time; in February, 1884, the plaintiff, the Grand Lodge enacted legislation giving it control over certain funds of defendant; defendant refused to turn over the said funds and the District Grand Lodge No. 5, on August 19, 1884, forfeited defendant's charter, together with another for similar reasons. In July 1884, a small minority of defendant lodge brought an action against the said defendant to get possession of the funds, and asked for an injunction and a receiver, which was granted. "The defendant in their answer to this bill admitted that their lodge was chartered under the laws of the State and denied the right to any body of men to forfeit or annul that charter, or to take from them their property, or money." The defendants prevailed in the lower courts and an appeal was then taken to the Court of Appeals. After a thorough review of the questions involved in affirming the decree of the

lower court, the Appellate Court of Appeals uses this language :

“The utmost effect, therefore, that can be attributed to the action of the grand lodge on the nineteenth of August, 1884, is the forfeiture of the documentary or conventional charter which it granted to the appellee in December, 1853. But the appellee and the other defendants to the supplemental bill stand upon this state charter which is still in force. They hold the funds in controversy, and have the right to hold them under the corporate powers thus conferred, and they so hold them entirely unaffected by the forfeiture by virtue of which alone the appellant in its supplemental bill claims them. The affirmance of the decree may therefore be well rested on this ground, without reference to the doctrine that a court of equity never lends its aid to the enforcement of forfeitures and penalties. Decree affirmed.”

District Grand Lodge No. 5, Independent Order of B’Nai B’Rith v. Jedidjah Lodge No. 5, Independent Order of B’Nai B’Rith. 3 Atlantic Rep. 104–108.

The above decision was sustained by the same court one year later in a cause growing out of the same transaction, Goodman et al. v. Jedidjah Lodge, 9 Atlantic, 13, and wherein the Court said :

“But, even if such change could not be made without inflicting such injury, and if the corporation has wrongfully refused to obey the order of the grand lodge, still this would only be cause for the annulment of its charter by the legislature, or for proceedings against it as provided by the corporation laws. Rev. Code, art. 67, p. 684, §§ 1–9. A corporation can only be dissolved, but the mode for doing that is likewise provided by law. Rev. Code, art. 67, p. 686, §§ 10–22. But this bill is not a proceeding under either of these provisions of the Code, and the court

has no power, upon such a bill, either to dissolve the corporation, or to forfeit its charter, or to correct any supposed misuse or abuse of its corporate powers; and it seems to us that the successful prosecution of one or the other of these remedies is essential to the relief asked by these complainants, even if they are entitled to it upon any ground.

“But, in the view we take of the case, they are not, upon the facts contained in this record, entitled to any relief whatever. The law applicable to the case is, in our opinion, correctly stated by the chancellor in *Smith v. Smith*, 3 Desaus. 557. That was a case similar, in many of its features, to this. The fund there in controversy belonged to an incorporate lodge of Masons, and was claimed by those who had in effect seceded and formed a new lodge. In the course of his opinion, the chancellor said: ‘It has been stated that the fund in controversy was raised chiefly by the contributions of these lodges which have adhered to the change made by the grand lodge in Charleston, and that the lodges who adhered to the ancient charter had contributed but little to the fund. This may be, and I believe is, correct, but it cannot have any influence upon this cause; for whenever individuals, or portions of a corporation, quit the main body, they leave all the rights and funds of the corporation which remain in its perfect character. * * * I am satisfied that the individuals who had left an incorporated society, and formed a voluntary one, cannot maintain a suit to recover the corporate funds, more especially as that corporation remains, in my judgment, entire, and is in full possession of all its rights.’

“The present case is unlike that of *Watson v. Jones*, 13 Wall. 679. In that case the trustees, both by the act incorporating them, as well as by the rules of the church, were the mere nominal title holders and custodians of the church property, and others could be elected by the congregation to supply their places once in every two years. In the use of the church building and property for all religious services and ecclesiastical purposes, the trustees were

under the control of a church body, called the 'Church Sessions,' and the court held that the question who constituted the church sessions and the congregation entitled by their religious faith to the use of the church building for religious purposes was a matter proper to be decided by the highest judicatory in the church itself, which in that case was the Presbyterian Church. In such a case the court said the preponderating weight of judicial authority in this country, and under our system of law, was that the legal tribunals must accept as final and binding the decisions of the highest judicatory in the particular church upon questions 'of discipline, or of faith, or ecclesiastical rule, custom, or law.' But this corporation is of a very different character, created for a very different purpose, and vested with very different powers from those conferred upon the church trustees by the corporation laws of Kentucky in that case.

"And much less does the case before us resemble, either in its facts or in the principles decided, the memorable one of the Methodist Book Concern, reported in 16 How. 288. There a great church organization had in its general conference agreed upon a plan of separation into a Church North and a Church South, which plan carried with it a pro rata division of the common property belonging to the whole church, including that of the 'Book Concern,' and the bill was filed to enforce that division. The court simply held that the plan of separation was validly adopted, and that its effect, as to the division of the property, was such as the complainants insisted upon.

"The other cases cited by counsel for the appellants do not appear to us to have any more direct bearing upon the questions involved in the present case than these two, and we therefore deem it unnecessary to review them. Whatever powers the higher lodges in such an organization as this may have to make rules or laws for the government of the subordinate lodges, and the discipline of their members, we think it quite certain that the courts

can never recognize as valid any rule or law so made, the effect of which is to confiscate property, or to arbitrarily take away property rights from one set of members, and give them to another set, nor will the courts allow or recognize the enforcement of any such rule when its enforcement will accomplish, and is designed to accomplish such a result."

9 Atlantic Rep. 13-19 (Court of Appeals of Maryland, March 16, 1887).

In the case of *Austin v. Searing*, 16 N. Y. 112, a case similar to the one before the court, that is frequently cited, and in which Judges Shankland, Selden and Brown each wrote an opinion in which all concurred, held with the Maryland Court. As we consider the case of the utmost importance, we not only cite from it but request for it the greatest consideration. The Court in part said:

"But were it distinctly averred that the defendants had subscribed the constitution of the grand as well as the subordinate lodge, I should still be of the opinion that public policy would not admit of parties binding themselves by such engagements. The effect of some of the provisions of these constitutions is to create a tribunal having power to adjudicate upon the rights of property of all the members of the subordinate lodges, and to transfer that property to others; the members of this tribunal being liable to constant fluctuations, and not subject, in any case to the selection or control of the parties upon whose rights they sit in judgment.

"To create a judicial tribunal is one of the functions of the sovereign power; and although parties may always make such tribunal for themselves, in any specific case, by a submission to arbitration, yet the power is guarded by the most cautious rules. A contract that the parties will submit confers no power upon the arbitrator; and even where there is an actual submission, it may be revoked at any time.

The law allows the party up to the last moment to ascertain whether there is not some covert bias or prejudice on the part of the arbitrator chosen.

* * *

“The by-laws and regulations of these voluntary associations may all be very well in their place and sphere, and may command generally the obedience and submission of those upon whom they are designed to act; they cannot, however, have the force of law, nor impair or affect the rights of property against the will of its real owners. So long as the members of these bodies yield their assent or concurrence, it is all very well; the law interposes no obstacle or objection. But when orders and decrees of the character of those referred to are resisted, and the owners of property refuse to be deprived of it, then it will be found that property has rights and the courts of justice have duties, of which the plaintiff in this action seems to have an indifferent conception. The courts of justice cannot be called upon to aid in enforcing the decrees of these self-created judicatories. The confiscation and forfeiture of property is an act of sovereign power; and the aid of this or any other court will not be rendered to enforce such proceedings, or to recognize legal or supposed legal rights founded upon them.” * * *

Austin v. Searing, 16 N. Y. 112.

A member of a subordinate lodge of the Ancient Order of United Workmen was suspended by the Supreme Lodge of the State of Kentucky because he refused to recognize and pay an assessment made by the said Supreme Lodge; the Supreme Lodge being incorporated under the laws of Kentucky, and the local lodge being incorporated under the laws of Michigan. The Supreme Court of Michigan considered the matter of sufficient importance to grant a writ of mandate reinstating the suspended member, has the following to say:

“The relator is not liable to pay the assessment. It is not competent for the respondent to subject itself, or its members, to a foreign authority in this way. There is no law of the State permitting it, nor could there be any law of the State which would subject a corporation created and existing under the laws of this State to the jurisdiction and control of a body existing in another state, and in no manner under the control of our law. The attempt of the respondent to do this is an attempt to set aside and ignore the very law of its being. A *mandamus* will therefore issue as prayed.”

Frank W. Lamphere v. The Grand Lodge of the
Ancient Order of United Workmen of the
State of Michigan, 47 Mich. Rep. 429-431.

In deciding a similar case in the same way, the Supreme Court of Iowa quotes with approval the above case in *State ex rel. Graham et al. v. Miller and Another*, 23 N. W. 241.

In a California case wherein a dispute arose between a subordinate lodge and the Grand Lodge of the Independent Order of Good Templars, and wherein the Grand Lodge suspended the subordinate lodge, and the Grand Chief Templar of the State of California appointed one Ellsworth to take charge of the property of said lodge for the reason that by the Constitution of the Grand Lodge, it was declared that any subordinate lodge which fails to do certain things shall be deemed to be an extinct lodge, and its charter shall be forfeited, and wherein the subordinate lodge brought suit for an injunction to restrain the Grand Lodge, the lower court gave judgment for the plaintiff, and which being appealed, and in passing upon the same the Supreme Court of the State of California said:

“The question presented is one of property merely; and in relation to this two controlling facts appear from the record, viz: That the plaintiff is a corporation duly organized under the laws of the State of California, and that it is the owner of the property in question, in which the defendants have no right, title or interest. It follows from these facts that the plaintiff is entitled to be protected against the acts of the defendants. The ownership of the property draws to itself the right of possession and control. And since the plaintiff is a corporation it can only be dissolved in the manner prescribed by the laws of California. The provision of the constitution of the grand lodge that in certain contingencies the subordinate lodge ‘shall be deemed an extinct lodge, and its charter shall be forfeited,’ and the ‘suspension’ by the grand lodge, and the action taken by the grand chief templar, have not the slightest effect upon the legal existence of the corporation; and as long as it exists its affairs must be managed by its duly-elected officers, as provided by law. If they misconduct themselves, appropriate proceedings to remove them must be resorted to. But the propriety of their conduct will not be inquired into in a suit by the corporation to protect its property.

“The showing seems to us to be sufficient to entitle the plaintiff to an injunction. We therefore advise that the judgment be affirmed.”

Merrill Lodge No. 299, I. O. G. T. v. Ellsworth et al., 20 Pac. Rep. 399-400 (Supreme Court of California, January 28, 1889).

In the case of Allnut v. High Court of Foresters, the relator, a member of the City of Straits Court (a Michigan corporation), was charged by another body, the Peninsular Court, with defamation; was fined fifteen dollars and suspended for two years. In passing upon the matter the Supreme Court of Michigan, June 27, 1886, said: * * *

“The Detroit society being a corporation under our laws, the rights of its members are entitled, in a proper case, to protection. The questions discussed relate to the propriety of our interference in this case.

“Under our statutes, the corporation in question has the right and duty of determining the conditions of membership. This it has done by its by-laws, and we find nothing in them which makes such membership subject to the action of any outside body. The subsidiary high court is not an incorporated body, under the laws of this State. One of the objections raised to its action here is that the rules of the order require it to become incorporated. We shall not undertake to discuss that question, but there is evidently much reason for it, as it would be contrary to the general legal rules to allow membership in a corporation to depend on the will or action of an unincorporated outside society. Whatever advantages may exist in affiliation with other associations, the rights of Michigan corporations must be governed by the laws of Michigan, and corporate privileges cannot be destroyed in violation of them.

28 N. W. Rep. 802-805 (Sup. Ct. of Michigan, June 27, 1886).

In the case of State Council of Junior Order of United American Mechanics of New Jersey v. National Council of Junior Order of United American Mechanics of North America et al., a case wherein the complainant, the State Council, withdrew from defendant, National Council, and the National Council organized, for similar purposes, another State Council, and gave it the same name as complainant for the purpose of putting complainant out of business. Complainant brought an action against the National Council praying for an injunction to prevent it from creating and supporting the rival body and to prevent it from using its (complainant's)

name. In the beginning defendant denied that its object was to put complainant out of business, but later admitted that such would be the result if defendant won. The Court of Chancery complimented both sides upon the manner in which all questions were presented, both in written briefs and oral arguments. As the same applies to the case now before the Court, we will, while stating that every sentence of the decision is worthy of careful scrutiny, call the Court's attention to those portions of said decision that supports the contention of appellee herein:

“The reason it gives for this action is that the complainant was for many years, and still ought to be subject to the jurisdiction of the defendant, and obedient to its laws, and that in the years 1899 and 1900 it rebelled and seceded from the defendant, and was disciplined therefor by the defendant, and its charter, granted by defendant and involving its right to exist, was revoked by the defendant. This rebellious conduct on the part of the complainant is admitted and justified by it, and the validity of this justification is one of the important questions, if not the only question, in the cause, and will be first dealt with. * * *

“The complainant admits that for many years it has held a charter granted by the defendant, and that it acted in all respects in obedience to the laws enacted by the defendant, until the fall of 1899, but it denies that it is in any sense the creature of the defendant, but asserts and shows that its existence as an organization of precisely its present character, predated that of the defendant, and that it, the complainant, in conjunction with a similar organization in the State of Pennsylvania and one in the State of Delaware, created the defendant, and that the defendant owes its existence to the complainant rather than the contrary, and it argues that the subordinate position which, subsequent to the creation of the defendant,

the complainant chose to occupy to it was purely voluntary and contractual and that complainant had the right, at any time, at its free will and pleasure, to dissolve the same, and resume its original independent existence, with all its consequences, viz., the full and complete jurisdiction which it had previously exercised over numerous local councils of the same order in the State of New Jersey. * * *

“The complainant was incorporated by an act of the Legislature of February 25, 1875 (P. L. 1875 (private), p. 52, but it was in existence as an unincorporated society from July 12, 1869. * * *

“Of course, the important matter, forming the very core and heart of these organizations, is the object or objects of their existence. That object is stated in the charter granted to complainant by the legislature, as follows: ‘And be it enacted, that the objects of this association shall be to maintain and promote the interests of the American youth; to assist them in obtaining employment; to encourage them in business; to afford relief to the members thereof, and to defray the expenses of their funerals, or such cases of distress as shall be defined by the by-laws.’
* * *

“The existence of two State councils bearing the same name, and having the same jurisdiction in one State is entirely inconsistent with the nature of the order. And while at the outset of the hearing counsel for the defendant did faintly insist, as before remarked, that the defendant’s plan of organizing sufficient local councils in New Jersey loyal to it in order to organize a State council loyal to it did not necessarily exclude the existence and jurisdiction of complainant, counsel finally abandoned that position, and boldly claimed that it meant the practical destruction of complainant and the compelling all the councils now loyal to complainant to come under the jurisdiction of the State council to be erected by defendant. In support of this theory, counsel for the defendant take radical grounds. They assert, as I understand their argument, that the decree of expulsion made against complainant by the National

council resulted in its extinction as an entity, and if that decree was inefficient for that purpose that the secession of the complainant from the National council had the same effect. The gist of their argument, as I understand it, is that the existence of the complainant's association for all these years has been so intertwined and combined with that of the defendant that the separation of the two means social death to the complainant. In other words, they assert that it is quite impossible to conceive of a State council of the Junior Order of the United American Mechanics which is not subordinate to and, so to speak, a part of the National council.

"In support of this theory counsel pointed out the fact that for all these years the complainant has acted with and in complete subordination to the National Council, and without any apparent reliance upon its State charter. * * *

"But it must be borne in mind that all this was purely voluntary on the part of the State council, and that its existence as a State council preceded that of the National council, and from this fact alone its ability to exist as a social entity independent of the National council clearly appears. Moreover, the ability of the local subordinate councils to exist independently even of the State council must be an admitted fact, for the existence of many of those in New Jersey preceded that of the State council. In point of fact, each local subordinate council has its own constitution and by-laws, and the logical result of the situation seems to be, as appears from an examination of the literature of the association, that while the National council cannot exist without the support of the several State councils and while the State councils cannot exist without the support of the several local subordinate councils, those local subordinate councils are the original constituent units or atoms, who, once having acquired life and existence, may continue that life and existence without reference to or assistance from either State or National council. * * *

“The complainant was organized as a complete social entity, quite capable of prolonged existence as the representative of its local constituent units, without the aid of the National council. It had distinct objects and purposes. Its joining in the creation of the National council and coming under its jurisdiction did not alter its essence or render it incapable of existence separate from the National council with full capacity to exercise all the functions which it had exercised when under such jurisdiction. The grant to the complainant of a special charter by the legislature approved, and made permanent its objects, and gave it by implication an exclusive right to the use of its name in this State as well as the exclusive right to grant charters to local councils. The attempt of the defendant, by unlawful means, to add to the original objects of the institution justified the complainant, if any justification is necessary, in severing its connection with the defendant. Such severance did not alter the inherent character of complainant’s existence or prevent it from altering the details of its constitution to suit it to an independent existence. It now, by its constituent members, represents the overwhelming majority of the local councils in this State and their constituent members amount in number to many thousands, and so long as it so represents them it is entitled to the exclusive use of its name and the exclusive right to grant charters to local councils and to be treated as the head of the order in this State.

“I will advise a decree in accordance with these views.”

(Court of Chancery of New Jersey, Aug. 1, 1906), 64 Atlantic 561–573.

In the case of *Detroit Savings Bank v. Haines*, it appears that the appellee was receiver of the Supreme Commandery of the United Friends of Michigan, and as such had about fifteen hundred dollars on deposit in the said bank. On the 26th day of July, 1898, one Ida M. Crout Potter filed her bill of com-

plaint in the Circuit Court for the County of Wayne, in Chancery, against the Supreme Commandery of the United Friends of Michigan. The Supreme Commandery was made the sole defendant. The bill, among other things prayed for an injunction against E. F. Lamb, William A. Haines and the Citizens' Savings Bank restraining them from paying any money or disposing of any property in their hands belonging to the defendant. Later the Circuit Court made an order appointing Mr. Haines receiver, and also granted an injunction against the bank. The bank filed its bill of interpleader against the receiver. The question in dispute being whether the Supreme Commandery of the United Friends of Michigan had any right to the funds in dispute. Proofs were heard; the bank was ordered to pay into court the amount in dispute and upon making said payment the bank was discharged from liability in the matter. From this decision an appeal was taken, which said appeal was dismissed by the Supreme Court. Other proceedings were thereafter had, which finally resulted in the Court decreeing the fund in controversy to defendant-appellee. Plaintiff appealed. In finally passing upon the matter the Court in part said:

“The funds, and the only ones, to which the supreme commandery is entitled, are prescribed by the law of that commandery, as follows: ‘The revenues of the supreme commandery shall be derived from charter fees from subordinate commanderies, per capita tax from subordinate commanderies, and from sale of supplies to subordinate commanderies and other members of the order.’ It was not, therefore, entitled to this sick-benefit fund. That fund belonged to Germania Commandery, No. 30, which, by

almost unanimous vote, passed it over to the defendant-appellee. It is clear that the supreme commandery has no interest in the fund, and was not entitled to the relief asked. The Court below very properly decreed that the moneys belonged to the sick-benefit fund, and that the defendant-appellee was entitled to them. That decree must be affirmed, with costs against the receiver." (Supreme Court of Michigan, July 19, 1901.)

Detroit Savings Bank v. Haines, 87 N. W. 66-68.

Reading the above case, the Court can see that the funds of the Supreme Commandery were raised in the same manner as the funds of appellant, Western Federation of Miners. The Court as above shown, decided that the Supreme Commandery was not entitled to the relief asked.

We now desire to call the Court's attention to a Pennsylvania case, entitled, "State Council Junior Order of United American Mechanics of Pennsylvania v. Emery et al. In this case it appears that a division arose in the said order during the year 1900 resulting in the formation of two factions. Duquesne Lodge No. 110, by formal resolution declared its adherence to the faction of the State Council headed by S. B. Woods, the other faction recognized Wobensmith. Duquesne Council No. 110 refused to pay to the other faction. On May 10, 1904, in *quo warranto* proceedings in the Court of Common Pleas, it was adjudged that the officers headed by Wobensmith were the legal officers of the State Council, and the other faction declared not entitled to the officers. Later, the council whose legality had been established, made demand upon the other faction for all the books, papers, charters, parapher-

nalía, funds and properties of whatever nature and kind in their possession and control and received everything but a sum of money contributed for sick and funeral benefits, which amounted to \$2,037.18. An action was then brought to compel the defendant to account for and pay over this fund to the State council. In passing upon this matter the Court, in part, said:

“This fund was contributed by members of Duquesne Council, prior to the date when its charter was revoked, under the following provisions in its constitution: ‘The dues of this council shall be such sums as shall be prescribed by the by-laws, which shall in no case be less than ten cents per week, which shall constitute a fund for the relief of sick and disabled members, and such other purposes as the council may deem judicious and such further sums as the by-laws shall prescribe for funeral dues, or to sustain their treasury. * * * Each council shall have power by their by-laws to credit the first money paid in by a member to his indebtedness for funeral and other charges, and the balance, if any, shall be credited to his dues.’ And the following by-laws: ‘The regular weekly dues of each contributing member of this council shall be fifteen cents. * * * The first money that a member pays into this council shall be credited on account of fines, funeral assessments, etc., he may owe, before any shall be credited for weekly dues.’ * * *

“It does not appear that the State council had any plan or arrangement for the collection or payment of any sick or funeral benefits. *All the beneficial features of that nature were left to the care of the local councils. This fund in question was made up entirely from the voluntary contributions of the members of the local council, placed in the hands of its trustees to be distributed by them for the benefit of the sick and the families of the dead of its members. With the control and administration of this*

fund the State council does not seem to have had anything to do. The authorities amply sustain the contention that funds raised by the members of subordinate bodies of this character for sick and funeral benefits, belong to the subordinate association, and are to be distributed by them to the parties for whose use and benefit they were contributed. It is held that the revocation of the charter of a subordinate body by the supreme body cannot have the effect of confiscating the property owned absolutely by the local body. The principle is thus stated in Niblack on Benefit Societies, § 129, p. 255: 'The terms of the laws of the supreme lodge or council of a society, providing that on suspension of one of the local organizations its property shall be forfeited and vest in the secretary of the supreme body, are void, in that they seek to confiscate without judicial process property held and owned absolutely by the local organization'—citing *Wicks v. Monihan*, 130 N. Y. 232, 29 N. E. 139, 14 L. R. A. 243; *Wells v. Monihan*, 129 N. Y. 161, 29 N. E. 232; *Austin v. Searing*, 16 N. Y. 112, 69 Am. Dec. 665. 'Whatever powers the higher lodges in such an organization as this may have to make rules or laws for the government of the subordinate lodges and the discipline of their members, we think it quite certain that the courts can never recognize as valid any rule or law so made, the effect of which is to confiscate property, or arbitrarily to take away property rights from one set of members and give them to another set; nor will the courts allow or recognize the enforcement of any such rule when its enforcement will accomplish, and is designed to accomplish, such a result.' *Goodman v. Jedidjah Lodge*, 67 Md. 117 (127), 9 Atl. 13; 13 Atl. 627. Another text-writer thus sums up the prevailing view of the courts as to this matter: 'In regard to the jurisdiction of superior over inferior bodies in an order or society, the courts will not enforce a forfeiture of the property rights of the latter, but may even interfere to prevent it. In such cases considerations of public policy will always prevail. In mere matters of dis-

cipline, where no property right is involved, the decisions of the superior organizations, if regularly rendered and not intentionally unjust, will be regarded as final. * * * Forfeiture of the conventional charter of a society incorporated by the state will not divest its property, nor can the property be affected by a secession of part of its members. Even if unincorporated, the majority of a society have generally the right to cut loose from a superior governing body and the minority have no redress if the property is used for the general purpose for which it was acquired.' 1 Bacon on Benefit Societies (1904), § 116.

"Does the act of June 20, 1883 (P. L. 132), change in any way the application of this principle in Pennsylvania? We think not. It does not attempt to divest any property rights, and, if it did, it would be unconstitutional. * * *

"We agree with the court below that under the facts of the case the payments so made should be approved by a court of equity. To hold otherwise would be to say that equity should do an inequitable thing.

"The assignments of error are overruled, the decree of the court below is affirmed, and this appeal is dismissed at the cost of the appellant."

(Supreme Court of Pennsylvania, Jan. 6, 1908), 68 Atl. 1023-1026.

We now desire to call the Court's attention to the last word on the law of this case that we have been able to find as far as the same relates to benevolent and fraternal bodies, which was decided by the Court of Chancery of New Jersey, July 14, 1913. The case in question being entitled the Grand Court Foresters of America v. Court Cavour No. 133, Foresters of America et al. In this case the complainant brought this action to compel the Court Cavour, the defendant, a beneficial society allied to the Foresters

of America, to turn over to the complainant the funds and property heretofore belonging to it on the ground that Court Cavour had been dissolved and that under the constitution and by-laws of the Foresters, the title to the property had vested in complainant. The Court will observe that in this case they proceeded, not under an alleged forfeiture clause contained in a charter, but under the Constitution and by-laws of complainant, which they claim provided for such forfeiture, while in the case now before the Court, the Court can examine, from cover to cover, the Constitution and by-laws of appellant, Western Federation of Miners, without finding a single syllable, word, clause or sentence authorizing the appellant, Western Federation of Miners, or any body acting for it, or under its direction or control to claim or take possession of the property of appellee here. (See R. 370-406.)

As the case at bar, and the one here cited have much in common, we will call the Court's attention in part to the language of the decision.

"Each candidate for admission to a subordinate court, in his written application, declares, among other things, that he will conform to and abide by all the rules of the court and of the order now in force or hereafter to be made, or submit to the penalties therein contained. * * *

"Among the so-called Supreme Court laws is the following: 'Sec. 215. Any Grand or subordinate court found guilty after due notice and hearing of any of the charges hereinafter set forth may be suspended for a period not exceeding two years, dissolved, or expelled. If dissolved or expelled, its charter, dispensation, rituals, money, books, paper, and all

other property, real or personal, shall be forfeited to the Supreme Court, or the respective Grand Court.'

* * *

"But there is another difficulty. In *State Council v. Enterprise Council No. 6*, 75 N. J. Eq. 245, 72 Atl. 19, it was held that under the laws of the order the State Council had no authority to administer the trust fund created by the local council for the benefit of its members and no power to dissolve the local court, considered either as a voluntary association or as an incorporated society. That seems to be the case here. Counsel for complainant sought to convince me, in a very elaborate argument, that the Grand Lodge was vested with authority to carry out the trusts or objects for which Court Cavour was constituted; but after a careful examination of the various laws of the order I fail to find any such authority. It is true that section 1 of article 18 of the Grand Court laws prescribed that, 'should any subordinate court become, either by operation of law or otherwise, dissolved or be suspended, expelled or secede from the order, all property, money, goods and effects shall vest in and be delivered to the Grand Lodge upon demand being made therefor.' But it is not provided that it shall take the money and other property of the dissolved court and apply them as a separate fund for the payment of its debts or for the other uses for which they were contributed. As far as appears they go into the general fund of the Grand Court subject to be disposed of according to its rules. * * *

"The rationale of the situation is that: The right of the member is contractual. He has agreed that the fund contributed by himself and by the other members shall be managed and applied by the officers of the court to which he belongs. He has further agreed that on dissolution the property shall go to the Grand Court; but he had not agreed that on the contingency that has happened, and while the local society, whether incorporated or not incorporated, exists, it shall be administered by the officers and agents of any other court. There has

been, however, no dissolution, first, because the judgment was unwarranted; second, because, if warranted, the Grand Court, has no power to dissolve the local society. * * *

“The so-called constitution and laws of the order are, as far as this corporation may have adopted them, nothing but its by-laws. Unlike the certificate of incorporation of the Supreme and Grand Courts, the certificate of incorporation of Court Cavour does not recognize any obligation to or dependence upon or connection with the order at large. It is in legal contemplation an independent entity, and its by-laws must stand or fall on that assumption. As long as it exists it cannot devolve upon any other organization those duties or obligations which, by its charter derived from the State, it is bound to perform itself. The Supreme and Grand Courts can by appropriate action, for cause, sever the bond which unites it to them, but after severance it is still a corporation and bound to the obligations of a corporation; to paraphrase the words of Mr. Justice Swayze: ‘It has not been dissolved. It is still an existing body. All that has happened has been that its allegiance to the order is at an end.’

“Forfeitures are not favored. They certainly will not be enforced, where enforcement must incapacitate the corporation from performing the very duty for which it was constituted. Counsel lays great stress upon the agreement to which each individual must subscribe on joining. ‘I will conform to and abide by all the rules of the court and of the order * * * or submit to the penalties therein contained.’ But this is the subscription of the individual binding, no doubt, upon him, but not upon the corporation. It is the right of the corporation and not of the individual that is here in controversy.

“I think the bill should be dismissed.”

Affirmed (Court of Chancery of New Jersey,
July 14, 1913), 88 Atl. 191-194.

See, also, State Council of Junior Order of United American Mechanics of New Jersey v. Enterprise Council, No. 6 (Court of Errors and Appeals of New Jersey, March 1, 1909), 72 Atl. 19-24.

See, also, State Council of Junior Order of United American Mechanics of New Jersey v. Hollywood Council (Court of Errors and Appeals of New Jersey, March 1, 1909), 72 Atl. 24.

We find that Bacon on Benefit Societies upholds the general rule that forfeitures are not favored as shown by the following:

“4. In regard to the jurisdiction of superior over inferior bodies in an order, or society, the courts will not enforce a forfeiture of the property rights of the latter, but may even interfere to prevent it. In such cases considerations of public policy will always prevail. In mere matters of discipline, where no property right is involved, the decision of the superior organization, if regularly rendered and not inherently unjust, will be regarded as final.

“5. Where subordinate organizations have a conventional as well as a State charter either may be forfeited or taken away without affecting the other. But in no case can a State charter be impaired or taken away except by direct action of the State. Forfeiture of the conventional charter of a society incorporated by the State will not divest its property, nor can the property be affected by a secession of part of its members. Even if unincorporated, the majority of a society have generally the right to cut loose from a superior governing body, and the minority have no redress if the property is used for the general purposes for which it was acquired.”

Benefit Societies and Life Insurance by Bacon,
p. 116.

See, also, National Council of Junior Order of
United American Mechanics of United
States of America v. State Council of
Junior Order of United American Mechan-
ics of State of New Jersey et al. (Court
of Chancery of New Jersey, Jan. 23, 1903),
53 Atl. 1082.

In all of the cases heretofore cited the actions in question were begun by benevolent or fraternal organizations and while their objects and purposes may be somewhat different to those of appellee here, we respectfully insist that the same rule applies. We will further say that it seems to be a new departure on the part of labor unions that are supposed to be organized for the purpose of protecting and uplifting the humble worker; caring for him when injured or distressed, to bring actions of this character; in fact, the writer of this brief would feel safe in saying that this is the only case brought before the courts for the purpose of taking away the contributions of the humble toiler, contributed by him for certain well-defined, specific purposes, thereby depriving him of this source of protection and changing altogether the object for which the property of appellee here was accumulated.

To further strengthen our position, however, we now call the Court's attention to the case of Wicks v. Monihan, a case decided by the Court of Appeals of New York, December 1, 1891. In this case

it appears that the plaintiff was treasurer of Local Assembly No. 4119 of the Knights of Labor, an industrial organization of Amsterdam, New York. The local assembly in question loaned five hundred dollars to E. H. Monihan and John C. Stack for the purpose of helping them, as representatives of another body to conduct a strike. After the money was loaned, and before any payment was made, the said Local Assembly No. 4119, had a disagreement with the General Assembly of the Knights of Labor of America (the superior governing body) and had been dissolved by the said General Assembly. The defense set up was that the local being dissolved by the governing body, it (the General Assembly) thereby became the owner of all of the property of the local, and that by reason of said dissolution the plaintiff had no cause of action. The attention of the Court is called to the fact that the forfeiture in this case as in others cited is contained in the Constitution and by-laws of the General Assembly of the Knights of Labor, and not limited to an alleged charter provision. The lower court decided this case in favor of the plaintiff. In affirming said judgment the Court of Appeals, in part, said:

“The case was defended on the theory that the general assembly possessed, and could rightfully exercise, autocratic governmental powers over all subordinate branches of the society; and that it could, by its order, without a hearing, expel from the organization any local or district assembly, and by that act become entitled to all the property of the assembly.

“In August, 1886, more than seven residents of Amsterdam after having effected a preliminary

organization, were chartered under the name of 'Local Assembly No. 4119 of the Knights of Labor' by the General Assembly of Knights of Labor of America, and were attached to District Assembly No. 126. The district and the local assembly continued attached to the general assembly until May 26, 1887, when the charter of District Assembly No. 126, and the charters of all of the local assemblies attached thereto (including No. 4119), were revoked and annulled for disobedience of the orders of the general assembly, and the master workmen of the district and local assemblies were directed to deliver their property to the general secretary of the general assembly, pursuant to section 1 of article 5 of the constitution of the general assembly, which provides: 'Art. 5, § 1. It shall be the duty of the district recording secretary to collect and take charge of the charters, seals, books, money and other property of any locals attached to the district assembly that may lapse, and shall give receipt to the officer of the local surrendering the same.' Local Assembly No. 4119 declined to surrender its property including the note in suit, to the general secretary, but continued its local organization, and retained possession of its property, in defiance of the order of the general assembly.

"It is asserted that the order of the general assembly *ipso facto* divested the local assembly of its title to the note in suit, as well as to all other property held by it. This contention cannot be sustained, on principle of authority. The precise question was determined in *Austin v. Searing*, 16 N. Y. 112, which arose over the title of Cayuga Lodge No. 80 of the Independent Order of Odd-Fellows to certain property in its possession. In that case, as in this, there was a supreme tribunal called the 'Grand Lodge of the United States of America,' and, like the Knights of Labor, it had district organizations. By the constitution of the Odd-Fellows, the grand lodge of the district had power to revoke the charters of all local lodges, and, when revoked, to take possession of their property. The

charter of Cayuga Lodge No. 80 was revoked for an alleged act of insubordination, and a decree confiscating the property promulgated. Nevertheless the members of the lodge refused to surrender their property, but retained possession of it. Afterwards a new lodge was chartered at Auburn by the Grand Lodge of the United States, and given the same name and number as the old lodge, but composed of different persons from those associated as members of the first lodge. By the charter granted to the new lodge all of the property which the grand lodge claimed to have acquired title to by confiscation was, in form, transferred to the new lodge. An action was brought by the persons associated and represented by the new lodge against the persons associated and represented by the old lodge for the recovery of the property in the possession of the old lodge. It was held that the provision in the constitution of the order, giving to the grand lodge power to confiscate the property of subordinate lodges, could not be enforced in the courts; and that the decree of the grand lodge, revoking the charter of the insubordinate local lodge, did not divest it of its property, and that the plaintiff could not recover. This judgment has remained unquestioned for more than a third of a century, and is the law of this state today.

“As before stated, this case was not tried upon the theory that the organizations which constitute the order of Knights of Labor are bound together by any contract, or that Local Assembly No. 4119 had contracted with the general assembly that, under certain circumstances, its property should be transferred to and become that of the general assembly, but upon the theory that the general assembly was vested with governmental powers, and could, by its edicts, divest the title of any district or local assembly to its property, and vest it in itself, without a hearing. This position cannot be sustained. The property of Local Assembly No. 4119 was not derived from the general assembly, but was contributed and owned by the associated members of

No. 4119, and held by an absolute title, as perfect and unconditional, so far as is shown by the case, as is the title by which any person or corporation holds its individual property. *To hold that the general assembly can by a decree divest the title to property, and vest it in itself, is giving to it a power which is forbidden to be exercised by congress, or by the legislature of any state. Bills confiscating the property of citizens, or of associations, without judicial process, are forbidden by the constitution; and no person, corporation, or association authorized to acquire and hold property can be divested of it by the fiat of any organization, nor in any way without its consent, or by due process of law.* This case is quite different from those arising over the expulsion of members from clubs and voluntary associations for violation of rules. In those cases the rights of the individual members are fixed by contract, and it is held that a member may be expelled by the association for violating the terms of the compact, provided, however, that due notice of the proposed action and an opportunity for defense be given. The judgment should be affirmed, with costs. All concur."

29 N. E. 139-140.

In the Trial Court appellants strenuously argued that appellee had done many things contrary to its articles of incorporation. Mentioning the fact that it had loaned money to other unions, the same being secured by mortgages; that because it had done so and nothing in its articles of incorporation authorized the making of loans it could, by reason thereof, enter into a contract with appellants whereby if it did not like its association with it or them, it could make it or them a present of thirty-six years of savings, and in their oral argument made the following statement:

“Do they mean to say they could take the money and engage in the picture show business?”

Appellee's answer is that it could, provided that the investment so made was an investment of idle moneys of the defendant corporation and was invested for the purpose of increasing the funds of appellee to be used by appellee for the purposes for which it was created. In support of this contention we claim that it is a fact well known to courts and laymen that as an organization becomes older its oldest members become enfeebled, thereby increasing its expenses.

In citing authorities to the Trial Court during the trial, appellants, in support of its views cited the case of *Miners' Ditch Co. v. Marks Zellerback and George C. Powers*, 37 Cal. 580-582, in which the Court in part said:

“The question put in the course of argument, ‘Would a contract by a railway company for a theater or chapel be void? exemplifies the doctrine.’ It would or would not, according as the purpose of the contracting parties was or was not connected with the railway. It might be a speculation separate from the railway, and prohibited. Or, if works were wanted in waste place, and the company found it for their interest to build a town and supply it with all requisites for inhabitancy, and, in order to secure a permanent supply of workmen of skill and responsibility, added a chapel and a theater, with religious and secular instruction, it might be for the purpose of the railway, and valid, and, though distantly connected, the outlay might be found eventually to increase the profit from the traffic.”

The above case we take it very fairly and forcibly disposes of appellants' contention in this respect.

Appellants comment upon the fact that appellee, by its answer called to the attention of the Trial Court that on or about the 17th day of December, 1914, an action was commenced by appellants, Charles H. Moyer and Guy E. Miller, associated with other parties against the then officers and trustees of appellee, which was known as, and numbered A-6590, which said complaint was thereafter amended. (See R. 95-110.) In said complaint the above-named appellants did not claim the ownership of the property now in dispute, but prayed for a restraining order preventing the defendants named therein, or anyone acting for them, from interfering with the said appellants (in the possession and control of the property of the Butte Miners' Union, a corporation, or the prosecution of the business and affairs of the Butte Miners' Union, a corporation. (R. 102-103.)

To this amended complaint the defendants therein named filed their answer (R. 110-124); to the allegations contained in the answer, the plaintiffs therein, two of appellants here, filed their reply, the substance of which denied generally and specifically each and every of the allegations in said answer contained. (R. 125-126.)

A hearing was had upon an order to show cause which extended for a period of many months, at the end of which time the Court granted the said order and returned its conclusions of law in which he found all issues in favor of the then plaintiffs and part of appellants herein. (R. 130-135.) Defendants, then officers of defendant below, applied

to the Supreme Court of the State of Montana for a writ of supervisory control (R. 136-250), and an order to show cause therein was issued out of the Supreme Court of the State of Montana. (R. 253-257.)

A motion to quash said order was filed by respondents (R. 258-259), and later an answer was filed therein (R. 259-293), and a hearing had thereon on the third day of July, 1915, and upon the seventh day of July, 1915, the Court made the following order:

“ORDER ANNULING ORDER DIRECTING
ISSUANCE OF INJUNCTION WESTERN
FEDERATION OF MINERS ET AL. vs.
SCAHILL ET AL.

3697

STATE ex rel. SCAHILL,

v.

DISTRICT COURT.

“The order directing an injunction to issue in the case of Western Federation of Miners et al. v. Martin Scahill et al., made on June 12, 1915, is annulled and the district court is ordered to set it aside.

“Opinion to be delivered at the convenience of the Court.”

“The above is a memoranda opinion of the Supreme Court of Montana, and appellants contend that the said Supreme Court never wrote nor delivered an opinion from that day to this; the said date being the 7th day of July, 1915. In relation to the above we desire to say to the Court that respondents in the Supreme Court, plaintiffs in the District Court and a portion of the appellants here, have never called up or asked to have set the said

cause for final hearing or determination and we are satisfied they never will, but whether a memoranda opinion or otherwise, the opinion in question in clear and unmistakable terms expresses the view taken of the actions (similar to this), and in a manner that was not satisfactory to the respondents therein, a portion of appellants here.

While apologizing to the Court for unduly extending our brief in this case, we respectfully submit that there was no error committed by the Trial Court, and that the decree should be affirmed.

Respectfully submitted,

A. C. McDANIEL,
PETER BREEN,
Solicitors for Appellee.

United States
Circuit Court of Appeals
For the Ninth Circuit. 4

CHARLES H. MOYER, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, State of Colorado, CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS, as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Appellee.

REPLY BRIEF.

A. C. McDANIEL,
PETER BREEN,
Solicitors for Appellee.

Filed

FEB 27 1917

F. D. Monckton

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2875.

CHARLES H. MOYER, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, State of Colorado, CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corporation,
Appellee.

Reply Brief.

MAY IT PLEASE THE COURT: After Appellants had filed and served their brief and after appellee had done likewise, appellee's attorney received through the mails a copy of a brief bearing the same title as above, with the additional title of "Oral Argument and Authorities." An examination of the same discloses to appellee that it does not correctly quote the record in this case, the errors in this regard being so numerous that appellee deems it necessary to briefly call the Court's attention to at least some of them.

In the statement of facts referred to in the said brief the testimony of the witness Patrick Meaney during the trial, called in rebuttal by appellants, is given in part upon pages 3 and 4 thereof. The record discloses that appellee was a corporation organized and doing business for a period of fourteen years, and three years prior to that time an unincorporated body of workingmen before Mr. Meaney ever became a member, and he admits upon cross-examination all that he knew about what was done by the Butte Miners' Union prior to January, 1895, was only through hearsay, stating specifically upon cross-examination that "I know that you made the motion appointing the Committee because we had the People's Headquarters and it was your object to become the first President of the Western Federation of Miners, but we saw to it as members of the People's Board that we had enough men there in the Miners' Union Hall to not allow you even to attend the first convention and that you were not even elected as a delegate." (Referring to one of appellee's former members and appellee's present counsel.) (R. 476, 477.)

In the brief of Oral Argument and Authorities the writer attempts to give the impression that the Workingmen's Union, referred to by Mr. Meaney during his examination at the trial, was the same Workingmen's Union referred to back in 1878, when such a construction is not warranted by the testimony of Mr. Meaney, as appears from the record. (R. 475-478.)

Further on in the statement of fact there seems to be a studied attempt made to create the impression that the organization of the Federation was essential to the well-being of the Butte Miners' Union (appellee here), and reference is also made to Revised Codes of Montana, sec. 3889. The Court will observe that the section referred to relates to corporations generally, and is not the Code provision under which appellee was organized.

On page 8 of Oral Argument and Authorities, practically all the argument appearing on said page is not founded upon any testimony appearing in the record. For instance, we find this statement:

“In June, 1914, on the 13th day, there was such a reign of violence within the Butte Miners' Union (appellee here) that its property was destroyed and with it the charter issued in 1893.”

As stated above, there is no evidence whatever warranting a statement that there was any violence within the Butte Miners' Union.

Further on, on the same page the writer of Oral Argument and Authorities says:

“But the radical members, what are known as ‘direct-action men,’ men who believe the destruction of the physical evidence, the destruction of the principle, conceived the idea that by destroying the charter they could destroy the relations of the Butte Miners' Union.”

This conclusion of the writer is not based on any evidence whatever appearing in the record.

We find the same condition upon page 9 of Oral Argument and Authorities, wherein it says in part:

“On September 22, 1914, the Butte Miners’ Union, by majority vote of its members, forced its officers and directors to make an application for a re-issue of the charter.”

Herein we find for the first time the word “forced” used. Nothing appearing in the record that would warrant such a statement.

Further on, on the same page, reference is made to the application for a reissuance of the charter, that the corporation shall conform to all its provisions. Appellee claims, and the trial court so found, that there had been no reissuance of the charter destroyed. (R. 296-302.)

On page 10 we find a reference made to “conditions becoming so turbulent that a large number of the members of the Butte Miners’ Union petitioned the Western Federation to assume charge of its affairs.” The facts in relation thereto being that appellant, Mr. Moyer, and others associated with him, had, for the purpose of getting possession of the property of appellee, had after June 13 and 23, 1914, brought about an amendment to the Constitution of the Western Federation of Miners, wherein they provided that 10% of the membership could set aside the rule of the majority and substitute therefor the rule of the minority; citing some of the allegations set forth by those who signed the minority petition for Moyer to take charge of the affairs of a Montana corporation, but they neglected to state that when the matter was heard in the District Court of the

State of Montana, upon an Order to Show Cause, and when appellee here, through its proper officers, appealed to the Supreme Court of the State of Montana, the said Supreme Court rendered an opinion annulling said order and ordering the District Court to set it aside. (Ex. "O," R. 294.)

We further find on page 10 the statement "that constant, repeated, patient efforts on the part of the Western Federation were made to adjust the distressful affairs of this once great Union and to restore it to local control."

The record discloses that the only efforts made by the Western Federation was to get possession of appellee's property. These efforts being made by the aid of the State Court of Montana and the Federal Courts. (R., pp. 2-305.)

On page 11 we find the following reference:

"This statement of facts is the basis of the action now before this court wherein the Federation, not on its own account but as a Trustee for the more than 100 organizations composing the Federation. * * * "

We say without fear of contradiction that nowhere in the record will the Court find any reference made to the 100 organizations or any other number.

We find on the same page and the top of the following page the statement, under the heading "Legal Issues Involved,"—

"The appellant herein seeks to enforce the trust imposed on it and to protect the interests not only of all the Locals but all those conserva-

tive members of the Butte Miners' Union that have been driven from it by the action of the malcontents and to prevent less than ten men from seizing the property of the Butte Miners' Union and wresting it from its benevolent purposes and converting it to their own personal use."

We again state that there is not a syllable of evidence anywhere in the record that would warrant a statement of this kind being made to this Court.

Reference is further made on page 12 to the Federation defending suits of the Butte Miners' Union. The witness Ernest Mills admitted that the suit in question and the only suit testified to by appellants was a joint suit of the Western Federation and Butte Miners' Union, wherein appellee was interested to the extent of \$25,000 and interest thereon for several years, and the Western Federation having a second mortgage on the same property.

Again, we find on page 13 of Appellants' Oral Argument and Authorities reference to "over 100 subordinate organizations composing the Federations" and a prior reference "usurpation of authority by the appellees, who intend to profit personally by this suit."

Further on, on the same page, we find an appeal for "Even-handed justice so that no recreant body in a time of trial and turbulence may wrest itself from the parent organization and by high-handed acts wreck an organization."

We again repeat that there is no evidence whatever in the record warranting the above statements.

On pages 13 and 14 we find the following:

“The character of the appellee in this suit is to seize and distribute to themselves personally the property of the Butte Miners’ Union.”

Again we repeat, nothing whatever in the record warranting this statement.

We further find on the same page the following statement:

“You will search the record in this case in vain for any action of the Butte Miners’ Union as a Union, looking toward the interposition of this plea but you will find declarations and clamor interposed by these defendants, that the appellee, sitting as a ‘Star-chamber body’ and using the name of the Butte Miners’ Union as a specific name under which to accomplish the purpose of the final disintegration of the Union, by preventing the proper Trustees from taking hold of the affairs of the Union and rehabilitating it.”

It is the same old familiar cry of “Stop Thief,” not warranted whatever by any facts in the record.

In support of the last statement, appellant cites the rule of *ultra vires* in its first or primary sense, to which citation appellee finds no fault, as the same emphatically sustains its, appellee’s position. But we desire to go a little further and call the Court’s attention to the following from the same authority:

“In the absence of a prohibitory statute, a corporation may dispose of its own property as it pleases to anyone, for any or no reason, subject only to the qualification that it may not do so, without express power in its behalf, against the wish of any single shareholder or may not do it so as to destroy the fund which creditors have a right to look to for payment. * * *

Minnesota Threshing Co. vs. Langdon, 46 N. W. 310.

On page 16 of Appellants' Oral Argument and Authorities, in commenting upon certain provisions of the Constitution of the Western Federation of Miners, they indulge in conclusions, and would ask this Court to consider matters that do not at all appear in the record other than by the pleadings, there being no evidence whatever, that appellee can discover, referring to the action taken by at least a portion of appellants upon a petition signed by eighteen alleged former members of appellee. That matter was disposed of by both the District and Supreme Courts of the State of Montana upon an Order to Show Cause directed to defendants in the lower court and upon an Order to Show Cause, after petition filed, for Writ of Supervisory Control in the Supreme Court. (R. 136-294.)

On page 20 of Oral Argument and Authorities, Appellants refer to certain paragraphs of appellee's answer in the trial court. Replying to criticisms therein, would say that the said Answer was duly sworn to and appellee at the trial offered to prove all of the allegations therein set forth, which offer ap-

pears on Record, pages 259-265, and was vigorously opposed by appellants, and we take it are not before the Court.

We further find on said page the following reference by appellants:

“To the distressed in Michigan alone it paid out over \$1,000,000, during the year of 1914.

* * * ”

There is no evidence whatever in the record supporting the above statement.

Further on, on said page the following reference is made:

“And for more than twenty years the Locals, varying from sixty to over one hundred and twenty, have each paid their share.”

Again we repeat there is no evidence in the record to support such a statement.

On page 21 of Oral Argument and Authorities we find the following:

“Possessed by an insane desire to destroy, the malcontents destroyed the property of the Butte Union and its books and papers and with those records where they cannot be reached the defendant (appellees) now come forward, not as representatives of the Butte Miners' Union, but as we assert for their individual aggrandizement, and interpose the plea of *ultra vires* of the Butte Union.”

Appellee admits that its property was destroyed, the records show that much, but if it appears to be the purpose of appellants to give this court the im-

pression that appellee's members are the one who destroyed the books, papers and records referred to, then appellee emphatically denies this statement and respectfully states to the Court that they were the victims of the said malcontents. To the latter part of this statement we again emphatically assert that there is no evidence whatever in the record warranting the statement above made.

On pages 26 and 27 of Oral Argument and Authorities, appellants, in support of their position, refer to section 4225, Code of Montana, 1907, wherein it is permissible for two or more of the associations mentioned in the said section to own real or personal property conjointly, and providing the method by which the same can be done, namely, by the two bodies or associations both incorporating. While appellants attempt to claim that the said section applies in the case at bar and have elaborately argued the case along said lines, they have evidently forgotten that the Western Federation of Miners never incorporated, and that the section in question has no application whatever.

On page 28 of Oral Argument and Authorities, at the top thereof, appellants refer to appellees as follows: "Here is a corporation wholly benevolent, in no way touching considerations of public policy, with a legal and equitable contract executed for over twenty years and now a dissolved association, declaring that it had no power to make the contract and asking to be relieved therefrom not by the association but by the nominal officers joined with other appellees herein." If appellants intend to give the Court the impression that the appellee corporation

is dissolved, we again repeat that such a statement is not warranted by any evidence whatever appearing in the record.

Further on, on said page 28, appellants attempt to dictate rules of pleading for appellee, and state what the trial court would have done for appellee had appellee followed the suggestions referred to for its benefit by appellants. Replying to same, appellee will say that it is well satisfied with the results obtained at the trial of the said action and respectfully submits that it can see no reason for the decision of the trial court being disturbed by this Court.

On page 29 of Oral Argument and Authorities, appellants refer to what they have done to adjust the troubles between them and appellee, and cite Tr. 194-208 therein showing that their principal efforts, by way of adjustment, were directed to getting possession and control of appellee's property, the same as now, but do not mention what happened to them when the matter came before the Supreme Court of the State of Montana (Exhibit "O," Rec. p. 294), which we submit to the consideration of this Court.

On the same page they also refer to "Con-Joint Associations," which we again submit has no application herein.

On page 33, under the title, "Reception of the Charter of 1914," of Oral Argument and Authorities, appellants use the following language:

"Briefly, the Union had destroyed its charter in the turbulent times prevailing that year; they applied for and received a reissuance of the Charter."

We again repeat there is no evidence whatever for the conclusion stated, namely, that the Union had destroyed its charter. We further state that the trial court, besides deciding other points at issue in appellee's favor, found there was no reissuance of the charter in question. (Tr. 296-302.)

Fed. Rep. —, P. —.

On page 35 of Appellants' Oral Argument and Authorities, we find the following:

"Nothing is done. The Federation continued to send its blanks and everything moved along as usual until June, 1915, when the schism occurred and the appellees decided to break the contract."

Replying to same, we call the Court's attention to the fact that appellants by using the word "appellees" attempt to convey the impression that it is not a corporation, but a number of individuals that is appellee here. We further call the Court's attention to the testimony in the record contradicting the same.

The witness Pat Leahy testified on behalf of appellee as follows:

Q. Well, did you or did the Butte Miners Union, a corporation, receive any correspondence or were they in any manner recognized or received any quarterly reports from the Western Federation of Miners after this month of October, 1914?

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr.

O'Neal, except by lawsuit, since the date of that letter? A. No, sir. (R. 443-444.)

The witness Pat Lee, called on behalf of appellee here, testified as follows on direct examination:

My name is Pat Lee; I am a miner, having resided in Butte going on seventeen years.
* * * I have been a member of the Butte Miners' Union since May, 1898. Plaintiff's Exhibit "C" (R. 107) contains my handwriting and is a letter from me to Mr. Mills, bearing date of November 24, 1914. After the mailing of that letter the Butte Miners' Union, a corporation, was never able to receive any communication or any recognition or any reports that the Constitution provided should be sent to the various Locals from the Western Federation. I did not write for them.

Q. Was there anything of an official character passed between the Butte Miners' Union and the Federation—I mean of a fraternal, not a legal, character?

A. A petition for the recall of the officers; that petition for recall was that the Butte Miners' Union drew up a petition to recall Charles H. Moyer, President of the Western Federation of Miners and John P. Lowney, a member of the Executive Board and against Miller of the Executive Board. (R. pp. 458-459.) I think it was about a week after this action, the filing of the petition, that action was commenced by the Federation to secure control of the Butte Miners' Union, property and affairs. The

Butte Miners' Union, a corporation, was conducted as a corporation all of the time, after this action and prior thereto. She is a corporation all of the time, the Butte Miners' Union.

Q. But I mean under the seal of the corporate organization instead of using the other?

A. Yes, we had two seals for use, the corporation seal for legal purposes and the Western Federation seal on anything we sent out to the Western Federation Locals. (R. pp. 462-463.) The Western Federation of Miners never made a demand upon the defendant corporation here for per capita tax after the receipts of the letter, Plaintiff's Exhibit "C," or the letter written to me referring to the charter. They never made any demand at all, and furnished no information and no reports of any kind. I would also like to state that we used to get monthly blanks for the monthly reports, and when I wrote that letter the monthly blanks did not come for the month of November. We used to get a monthly blank for the written report and when I wrote that the blank did not come for the month of November and never after for the month of November, nor after that. (R. p. 464.)

On page 37 of Appellants' Oral Argument and Authorities, we find the following:

" * * * W. J. Wicks was Secretary and continued to be Secretary for some years and that the minutes of the Federation show no discussion of the Charter."

Replying to same we call the Court's attention to the fact that nowhere in the record is there any testimony as to any discussion of the charter. The discussions therein referred to being at meetings of the Butte Miners' Union, a corporation, appellee here. The evidence further clearly showing that all the records of appellee were destroyed on June 13, and June 23, 1914, when its hall, which was also its place of business, was blown up and destroyed. The testimony of the witness, Mr. Deeney, shows that "There was a record kept by appellee. I think that was made a record; yes, it was a matter of consequence and would be. * * * I do not know what happened to it. We understood they were all destroyed on the 13th of June, 1914, or the major portion." (R. pp. 431-432.)

The only record we find that in any manner refers to a discussion of the charter is contained in Plaintiff's Exhibit "J." (R. pp. 480-568.) Quoting from page 500 we find the following:

"Committee on Charter reported form of charter and report adopted as amended."

This is the only reference to the adoption of any form of charter, and what amendment was offered can only be left to conjecture.

On page 39 of Appellant's Oral Argument and Authorities, we find the testimony of the witness James Maher in part as follows:

"I saw the original Charter (Tr. 341) and it was identical with the Aspen charter."

The witness Mr. Maher, on cross-examination, in addition to the above, testified as follows:

“I saw the charter of the Butte Miners’ Union No. 1 hanging on the wall but I don’t think I ever read it.”

On page 41, under the title “Summary of Facts,” we find the following:

“That in the years that passed those Locals numbered from 17 to 60 and now over 100 difference.”

We again call the Court’s attention to the fact that there is absolutely no evidence in the record upon which to base such a statement. All that we can find any place in the record is a statement in the minutes of the Convention at which the Federation was organized that a motion was made, which motion is as follows:

“On motion a committee of one member from each Union represented in this body be appointed to draft a constitution and by-laws.”
(R. p. 483.)

On Record, p. 484, we find that fifteen persons were appointed in compliance with said motion. That is all that in any manner shows the number of Unions present at the first Convention, and as repeatedly stated no evidence whatever of the number of Locals since said time.

On page 42 of Appellants’ Oral Argument and Authorities (the concluding page), we find the following:

“ * * * If it should supinely permit the
appellees to secede from the order. * * * ”

We again call the Court's attention to the studied efforts of appellants to refer to appellee as appellees, without any authority therefor appearing in the record.

In the above brief statement we have attempted to call the Court's attention to the numerous misleading statements quoted in the brief in question; in so doing appellee has carefully and repeatedly examined the record to be sure of its position in this matter. While numerous authorities are cited, we will not at this time attempt to review them, other than to say that, in appellee's judgment, the same are not applicable to the case now before the Court.

Among other cases cited in support of appellants' views is the case of Schubert Lodge No. 118 K. of P. etc. vs. Schubert Kranken Unterstuetzungs-Verein, 38 Atl. 347, which case distinguishes between the Local organizations, who are incorporated under the laws of their respective States, and similar organizations that are not incorporated. In the opinion of the Court we find the following:

"Complainant is a subordinate to the Grand Lodge of New Jersey. The bill alleges and the answer admits that the complainant here is a corporation created and existing under the laws of the State of New Jersey. In that respect the case differs from the case developed in Grand Lodge K. P. vs. Germania No. 50 K. P., where Germania Lodge was a nonincorporated Association. * * * (The case last referred to also cited by appellants in their brief immediately preceding this case and decided by the same

court and on the pages preceding the page on which this opinion commences). It is not disputed but that these funds were the result of the accumulation of dues paid in by members of the order, and that they became at once impressed with a trust, the terms of which are to be found in the constitution, laws and by-laws of the order and that they cannot be applied to any use except those defined in these instruments. These uses are, first to pay the expenses of the lodge and dues to the Grand and Supreme lodges; second, to make payments to sick members; and third, payment of expenses of burial of deceased members. * * * In the first place it is to be observed that the Schubert Lodge, being not only organized under the constitution and laws of the order but also incorporated under the laws of the State, the constitution and laws of the order not only defined the terms upon which the funds of the lodge were held in trust but also formed a contract between the different members of the lodge and a breach of the contract between the Schubert Lodge and the Supreme Lodge, if there ever was such a contract, could not have the effect of altering the terms of the trust and contract between the members of that Lodge; each member of the Lodge was interested in those funds and none of them could be diverted from the purpose to which they were devoted without the consent of every individual member. * * * The complainant corpora-

tion has never lost its identity and organization. The funds in question belong to it and must be so decreed, with costs against the defendants.”

We respectfully contend that the last case very strongly favors the position of appellee. Its organization is intact; it is a Montana corporation, authorized to and doing business under the laws of said State; its funds were collected in the manner referred to in this case to be used for the same purposes and cannot be diverted to any other use. We may search the constitution of appellants, Western Federation, in vain to find wherein there is any provision for caring for the sick or burying the dead. Therefore it would be impossible for them to comply with the requirements of constitution of appellee and would be diverting the funds to an unlawful use.

Appellants have cited numerous cases showing where Courts are becoming more liberal in construing the old rule against *ultra vires* contracts. For said purpose they cite section 681, Cook on Corporations. The concluding paragraph of the section in question reads as follows:

“In the Federal courts, on the contrary, the old rule against *ultra vires* contracts is upheld in all its rigor and applied with all its severity; the tendency of modern jurisprudence to relax on that subject finds no favor in the Federal courts.”

In the case of McCormick vs. Market Bank, 165 U. S. 538, in passing upon the question of *ultra vires*, the Court finds as follows:

“The doctrine of *ultra vires*, by which a contract made by a corporation beyond the scope of its corporate powers is unlawful and void, and will not support an action, rests, as this Court has often recognized and affirmed, upon three distinct grounds: The obligation of anyone contracting with a corporation, to take notice of the legal limits of its powers; the interest of the stockholders, not to be subject to risks which they have never undertaken and above all the interest of the public, that the corporation shall not transcend the powers conferred upon it by law.”

We again, as in our first brief, respectfully submit to this Court that the lower Court committed no error, and that its judgment and decree should be affirmed.

Respectfully,
PETER BREEN,
Attorney for Appellee.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Oral Argument and Authorities.

CHARLES H. MOYER, as Trustee for the Western
Federation of Miners, etc., CHARLES H.
MOYER, C. E. MAHONEY and ERNEST
MILLS, as Members of the Western Feder-
ation of Miners, etc.

Appellants,

VS.

THE BUTTE MINERS' UNION,

Appellee.

Upon Appeal from the United States District Court of Montana.

CANNING & GEAGAN,
E. P. KELLY,

of Butte, Montana;

HON. O. N. HILTON,
CAESAR A. ROBERTS,
LESLIE M. ROBERTS,

of Denver, Colorado;

Solicitors and of Counsel for Appellants.

No. 2875

United States
Circuit Court of Appeals

For the Ninth Circuit.

Oral Argument and Authorities.

CHARLES H. MOYER, as Trustee for the Western
Federation of Miners, etc., CHARLES H.
MOYER, C. E. MAHONEY and ERNEST
MILLS, as Members of the Western Feder-
ation of Miners, etc.

Appellants,

VS.

THE BUTTE MINERS' UNION,

Appellee.

May It Please the Court:

In the printed transcript of the record, there are about 128 pages of duplicate documents, that even, as original exhibits are, in our view, wholly immaterial to the issues in this case, but possibly they answer some purpose of the appellee which placed them there. With these excised, the record is of ample size, but swelled to an unnecessary proportion,

the matter we think, is properly called to the attention of the court. Therefore, in order to aid the court most expeditiously to reach the essential factors, we shall at this time make a restatement of the facts.

STATEMENT OF FACTS.

The Butte Miners' Union first became an association about 1878, and then became a body corporate on or about the 16th day of April, 1881, under the name of The Miners' Union, under the laws of Montana.

Its declared purpose at that time was (Tr., p. 157) :

“To protect the interests of the membership of said association, to enable it to hold such property as may be necessary for the protection of its good and the advancement of the interest of the same, and to enable it to establish subordinate organization and to become a body politic and corporate in law.”

(Also Tr., p. 450.)

From this declaration it will be seen that the corporation was benevolent and social in its character—at least it was not for pecuniary profit.

While the laws of Montana limit the purposes for which corporations may be formed, nevertheless to lodge and church and associations, not for pecuniary purposes, are granted, by Sections 4225 and 4226 of the Revised Codes of Montana, certain unusual

privileges in that they may own real and personal property conjointly and manage the same conjointly and the respective governing bodies of such corporations, may act in conjunction in incorporating under these sections.

As the Butte Miners' Union was not for profit it could, by express statutory permission, and did avail itself of the benefit of these sections. It had existed from 1881 to May, 1893, and it then felt the necessity of extending its usefulness and to that end joined to itself and itself joined with other organizations having similar objects, so that in 1893 it became the decisive factor and the dominant factor in forming the Western Federation of Miners, the appellant herein.

The underlying reason for this action is best expressed in the language of Patrick Meaney, who was president of the Workingmen's Union, the forerunner of the Butte Miners' Union, and who has resided in Butte for more than thirty-seven years. He says:

The main purpose of the formation of the Western Federation of Miners was to relieve the Butte Miners of putting up money that was draining from them in support of the Coeur d'Alene strike of 1892, and to get all the unions formed into an organization of miners that would aid the cause. That was one of the things, and in that way it would relieve Butte of the drain. This organization was formed in the Miners' Hall in Butte, in the month of May, 1893. The Butte Miners' Union issued the call

for it, and Mr. Breen made the motion appointing a committee of five of the Butte Miners' Union, which constituted Tom Nolan, Charles O'Brien, William McLean and John Gilligan. They communicated with the various miners unions throughout the West, for the purpose of meeting in Butte some time in the middle of May, I have forgotten the exact date, for the purpose of forming a western miners organization, or a miners organization of the west. They had not determined the name of it until the convention had met. John Gilligan was the first president of the Western Federation of Miners and William Weeks was the first Secretary.

(Tr., p. 476.)

Then, on the 15th day of May, 1893, in the Miners' Union Hall in Butte, Montana, the convention was called to order for the purpose of organizing or forming a federation (Tr., p. 480). There were represented in that convention the states of Montana, South Dakota, Colorado, Utah, Idaho, comprising a total of SEVENTEEN organizations, which then and there received their numbers from 1 to 17, and all received an identical charter of which Butte took No. 1 and Aspen, Colorado, took No. 6.

One of the first declarations of the organization meeting was,

On motion The Western Federation of Miners is composed of unions represented in this convention. (Tr., p. 483.)

One of its declared objects was,

Seventh, To use all honorable means to maintain

friendly relations between ourselves and our employers, and endeavor by arbitration and conciliation to settle such differences as may arise between us, and thus make strikes unnecessary. (Tr., p. 486.)

And in the First Article of its Constitution it declares:

Section 2. The object of this Federation is to unite the various Miners Unions of the West into one central body; to practice those virtues that adorn society and remind man of his duty to his fellowman; the elevation of his position and the maintenance of the rights of the miner. (Tr., p. 487.)

And still further in pursuance of these purposes they say:

Resolved, That the first official act of The Western Federation of Miners, shall be the writing of a letter to the Labour Bureau of both houses of Congress, demanding a Congressional investigation of the labor troubles in the Coeur d'Alenes, Idaho." (Tr., p. 514.)

In that same month of June, 1893, the Western Federation of Miners sent to the Eureka Miners' Union \$200, to assist them (Tr., p. 516), and \$500 for the use of the Coeur d'Alene strikers (Tr., p. 517), and in October of the same year it sent \$500, through John Gilligan of the Butte Union, to the distressed families in the Coeur d'Alenes. (Tr., p. 518.) Hence the very purpose that the Butte Miners' Union had in view, relief from the drain by reason of the

strike at Coeur d'Alene, was taken over by the Federation and seventeen constituent organizations, in place of falling upon Butte standing alone.

It is essential to notice that the Butte Miners' Union has formed, for its own purposes, a central body.

This action was in keeping with the express terms of the Montana statute, which provides:

"Every corporation, as such, has power
7 To enter into any OBLIGATIONS or CONTRACTS ESSENTIAL to the transaction of its ORDINARY affairs, or for the PURPOSES of the corporation."

(Revised Codes of Montana, Sec. 3889.)

The Butte Miners' Union was the only authority which could determine that the formation of a Federation was ESSENTIAL to the transaction of its ordinary affairs and for the purposes of its corporation.

And in construing this identical statute, where a corporation had formed a partnership with individuals, the Supreme Court of California says:

"There is no rule of law that will preclude a corporation from entering into a contract with an individual which will have the effect to carry out directly or indirectly the OBJECT of its incorporation, and to provide in that agreement that the gains or losses of the venture shall be borne equally by both parties.

Section 354 of the Civil Code provides: Every corporation as such has the power to enter into any obligations or contracts essential to the

transaction of its ordinary affairs, or for the purposes of the corporation.

Whether a contract is 'essential' to the transaction of its ordinary affairs, or for the purposes of the corporation IS TO BE DETERMINED BY THE CORPORATION or those to whom the management of its affairs is entrusted.

If it is within the apparent scope of its organization, the fact that the contract has been entered into by it, or by its representative, is a DETERMINATION on the part of the corporation that it is ESSENTIAL and the corporation WILL NOT BE PERMITTED THEREAFTER TO QUESTION ITS EFFECT."

Bates v. Coronado Beach Co., 109 Cal., 160; 41 Pac., 855.

In 1893 the Butte Miners' Union then secured the co-operation of all the locals in all the western states, and in common with them bore its proportionate share of burdens, and only its proportionate share of burdens, and received its full share of benefits and advantages.

It participated in every annual convention of the Western Federation of Miners until the year 1915.

It was present and through its own large delegation dictated various amendments to the Constitution and passed the following amendment:

"Amend by adding to 'The Duties of President' in Art. 4, Sec. 1, after the word Miners, page 9, line 37: The President, shall have power on petition of ten per cent of the members in good standing in their respective locals making charges in writing against their local officers to take complete charge of the local's affairs,

and if the charges are proven he shall call a special election within thirty days and place the local's affairs on a business basis before relinquishing to the local's officials."

(Tr., p. 97.)

This complete union of purpose, identity of objects and mutual dependence existed without interruption for more than twenty-two years.

In June, 1914, on the 13th day there was such a reign of violence within the Butte Miners' Union that its property was destroyed and with it the charter issued to it in 1893.

It only needs to be stated, to be admitted as a fact, that the destruction of the paper document was by no means the destruction of the charter, because the contract between the Federation and its organizations, and hence, between each other, existed in principle and in practice. But the radical members, what are known as direct-action men, men who believe that the destruction of the physical evidence is the destruction of the principle, conceived the idea that by destroying the charter, they could destroy the relations of the Butte Miners' Union not only to the Federation, but to all the other locals, and the attitude of those men is best expressed by the defendant's witness, Pat Leahy, who says:

"I guess that charter that was received in 1893, was blown to hell or to some other foreign country, wherever it went I don't know, but the

hall was blown up. I never saw it after the 13th of June."

(Tr., p. 441.)

The utter disregard of rights and property, expressed in the coarse and profane words by this witness, well expresses the attitude of the few who had determined on the destruction of the Butte Miners' Union, which had then fallen from its high estate into a rebellious and turbulent body, which in this position became a ready prey to the vehemence of the radical element that had successfully injected into the body corporate the principles of speedy dissolution.

On September 22nd, 1914, the Butte Miners' Union, by a majority vote of its membership, forced its officers and directors to make an application for a reissue of the charter, and in that application tendered the following consideration:

"It is hereby agreed in the acceptance of the said charter that the aforesaid corporation shall conform to all of its provisions and that the same are fully understood, and to the constitution, by-laws, rules and regulations of the Western Federation of Miners."

(Tr., p. 203, Exhibit A.)

The charter was then reissued by the Western Federation of Miners on the 3rd day of October, 1914.

When the charter was received, Charles Baxter, ~~William E. Deeney~~, Pat Leahy, Pat Lee, ~~James J. Maher~~, conceived the idea of rejecting the charter

by claiming that it did not contain the same conditions as the charter issued May 15, 1893.

The turbulence continued, and so successfully had these parties continued the fomentation of internal dissensions, that on November 23rd, 1914, a large number of the members of Butte Miners' Union petitioned the Western Federation to assume charge of its affairs, reciting that the officials and trustees of said union are acting in violation of the Constitution of the Butte Miners' Union and of the Western Federation of Miners, and further, that "there has been utter inefficiency and disregard of the best interests of the organization and the principles of unionism." And further,

"that indifference to the welfare of the organization is clearly manifested by the failure of the various officials and trustees to keep in good standing."

(Tr., pp. 205-206.)

In accordance with that petition on December 7, 1914, proper authority was given to Guy E. Miller of Butte to take charge of the affairs of the union as provided by the Constitution.

(Tr., p. 207.)

From that time, December, 1914, until June, 1915, constant, repeated, patient efforts on the part of the Western Federation were made to adjust the distressful affairs of this once great union, and to restore it to local control. Repeated promises and

agreements were made by the parties, but the defendants herein absolutely refused to allow peace and quiet and local control to prevail, and in a series of bumptious resolutions, utterly without foundation in fact, proceeded to withdraw from the Western Federation, reciting, amongst other things,

“That the Butte Miners’ Union, a corporation, hereby rescinds and repudiates any CONTRACT that heretofore existed and may at present exist between the said The Butte Miners Union, a corporation, and the Western Federation of Miners, by reason of said charter as aforesaid, or in any other way, and hereby declares the same null and void.”

(Tr., p. 234.)

This statement of facts is the basis of the action now before this court, wherein the Federation, not on its own account, but as a Trustee for the more than one hundred organizations composing the Federation, seeks to secure a compliance with the Constitution, the rules and regulations of the order.

THE LEGAL ISSUES INVOLVED.

First. In its Trustee capacity and on behalf of the subordinate organizations, the appellant herein seeks to enforce the trust imposed on it and to protect the interests not only of all the locals, but of those conservative members of the Butte Miners’ Union that have been driven from it by the direct

action of the malcontents, and to prevent less than ten men from seizing the property of the Butte Miners' Union and wresting it from its benevolent purpose and converting it to their own personal use.

Second. In answer to this bill, the appellees plead that the contract of association was *ultra vires* the corporation, and that the reissued charter differed in substantial particulars from that of May 15, 1893.

THE PLEA OF ULTRA VIRES.

First of all, before the plea of *ultra vires* can be even entertained, the party pleading it to an executed contract, ought not to be heard, unless it accompanies its plea with an offer to return any advantage that it has received by reason of the contract, and to restore to its first estate the party acting in good faith with it and coming into the court offering, as a condition precedent to being relieved, that it offers to do equity.

Therefore, whatever of substance there may be in the plea, it cannot, in our view, be entertained at this hearing until the offer to do equity is made.

It is in evidence in terms that the Western Federation of Miners defended suits brought against the Butte Miners' Union involving large sums of money and recovering of moneys advanced on mortgages.

(Tr., p. 326 et seq.)

It is significant that the appellees are interested

in this matter only that they seek to become owners of the property of the Butte Miners' Union. These men, the president, secretary and board of trustees, were the ones that declared that THEY "repudiate and rescind any CONTRACT" that heretofore existed between the Butte Miners' Union and the Federation. They admit that they have been acting under a contract, and without any official action other than the usurpation of authority by the appellees who intend to profit personally by this suit, they "rescind a contract" acted under for twenty years. Seventeen subordinate organizations composed the Federation in 1893, and to-day over ONE HUNDRED subordinate organizations compose the Federation, and every one of these hundred organizations is interested in enforcing the rules and regulations of the Federation in order that the strongest local and the weakest local may receive even-handed justice, so that no recreant body, in a time of trial and turbulence, may wrest itself from the parent organization, and by high-handed acts wreck an organization that for more than twenty years has been a beneficial activity in protecting, aiding and assisting to better the conditions of the individuals who compose it.

The character of the Federation in this suit is that of a trustee acting in behalf of every member of every subordinate organization.

The character of the appellees in this suit is to

seize and distribute to themselves, personally, the property of the Butte Miners' Union.

These are the evidentiary facts upon which the appellees seek to have heard their plea of *ultra vires*.

You will search the record in this case in vain, for any action of the Butte Miners' Union, as a union, looking toward the interposition of this plea, but you will find declaration and clamor interposed by these defendants, the appellees, sitting as a star chamber body and using the name of the Butte Miners' Union as a specific name under which to accomplish the purpose of the final disintegration of the union, by preventing the proper trustee from taking hold of the affairs of the union and rehabilitating it.

As prefatory to the discussion, let us restate the rule of *ultra vires*. In its first, or primary sense, it means:

An act which transcends the powers, conferred by law, on the corporation; something beyond its scope which it has no power to perform under any circumstances or for any purpose.

Minnesota Threshing Co. v. Langdon, 44 Minn., 37 (41); 46 N. W., 310.

In its secondary sense it is

An excess of authority; something done in violation of the rights of a minority; or an act irregularly done.

Bell v. Kirkland, 102 Minn., 213 (218); 113 N. W., 271; 13 L. R. A. (N. S.), 793.

In its primary sense the act is void. In its secondary sense, it is voidable only, and under these conditions the plea of *ultra vires* never prevails, where, if sustained, the result would be to work injustice or harm.

In this case we are not concerned with the primary rule. We are concerned with it in its secondary sense.

Whether or not an act of the corporation is *ultra vires*, in the secondary sense is to be determined by the rules of logic; by sound reasoning and the results that come from one determination or the other.

POSITION OF APPELLEES.

It is very certain that the appellees have never been, since the inception of this suit, in position to offer any complaint as to the management of the affairs of the Western Federation.

Before it could be heard on any question of that sort it must exhaust the remedies provided for by its internal discipline. Article XX of the Constitution of the Federation provides that—

Section 1. Whenever a vital circumstance, not otherwise provided for, arises and the same cannot in justice be deferred until the assembling of the convention, the Executive Board may submit any important question so arising to a referendum vote of the entire membership in good standing, in the manner described in

section 1 of Article XIX. The majority of such vote to govern in all cases submitted.

(Tr., page 400.)

And Article XIX provides that the initiative and referendum shall govern all legislation.

(Tr., pp. 399-400.)

There is also a provision that between conventions the Executive Board shall constitute the Federation Board of arbitration and conciliation.

(Tr., p. 382.)

So that it will thus be seen that there is ample provision for taking care of every dispute, for looking into every vital circumstance and for immediate relief and investigation by the entire body of unions, where one union may feel that its action is misunderstood or the governing board in its view, may be oppressive.

The Federation, as trustee, acted upon the petition of the required number to take charge of the affairs of the local union.

Now, if this petition was not representative of the body of Butte Union, or if the board of trustees differed from the petitioners as to procedure, a vital circumstance was present and a referendum could have been instantly obtained.

This action is a condition precedent to any plea that may be interposed by the appellees.

The first and paramount duty, the duty which

if left undone will estop a subordinate body from complaining of the supreme body in the courts; we say, the first and paramount duty was for the officers of the union to state that an emergency existed; that a vital circumstance was present and to demand relief from the Federation itself.

This duty being left undone, we submit that the appellees cannot be heard on any plea, until as a condition precedent they show to the court that they have exhausted the remedies provided for internal management by an appeal to the supreme body in accordance with the Constitution.

In the answer (paragraph 17, Tr., p. 37) the appellees admit the acceptance of the charter on May 15, 1893, but deny any authority to enter into that contract under the laws of Montana; in paragraph 28 (Tr., pp. 42-43) they admit that they destroyed the property of the Butte Union, and in paragraph 31 (Tr., p. 44) that they applied for a new charter which they refused to accept. *was destroyed and that the defendant members revolted June 1st 1914.*

Here again might be called a vital circumstance.

If the charter was not such a charter as they believed themselves entitled to (and let it be borne in mind that no official action was taken to reject it), they could apply and have the matter determined by a referendum vote. Here again they violated the rule of law as to exhausting the remedies provided for internal discipline, in paragraphs 36 and 37.

These facts all appear from the original plead-

ings. As a sample of the clamor that is characteristic of the amended answer to the amended bill of complaint, we call the court's attention to paragraph 18, at page 218 of transcript, as printed :

"18. That the plaintiff, Western Federation of Miners, is no longer a bona fide labor organization. That it is but a pretense and a sham, whose only purpose is to collect moneys for the purpose of paying salaries, hotel bills, etc., so as to keep the above-named plaintiffs Moyer, Miller, and the above-named Lowney, Mahoney and O'Bryne and others in idleness at the expense of the miners and others in the country, who yield to their persuasions or succumb to their bluffs."

This street oratory has been expressly condemned by this court. Before a complainant can come into this court he is required to comply with the equity rule (Rule 94, found in 29 Supreme Court Reporter at page xxxvii), which provides that a complainant

"must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and if necessary the share holders, and the causes of his failure to obtain such action."

Smith v. Chase & Baker Piano Mfg. Co.,
197 Fed., 466 (470).

The bill in that case contained the general assertion that the action of the defendants "was in pursuance of a contract, craftily, corruptly and fraudulently entered into between two corporations," and

because of the generality of the allegation the rule prevailed that the bill was not sufficient to sustain a cause of action. In this case the court further said:

“It would seem that complainant desired litigation more than an adjustment of existing troubles,”

because in that case the complainant was asked to attend a meeting involving a rearrangement of the relations existing between the contending corporations, and then adds that “such conduct does not comply with either the letter or the spirit of the rule.”

Smith v. Chase & Baker P. Mfg. Co., 197
Fed., 466 (470), and concludes,

Corporations controlled and managed by the same officers and stockholders have a right to deal with each other and courts will not interfere with their internal affairs, unless the actions of the majority in control are dishonest or fraudulently oppressive to the minority. Losses resulting from either ignorant or even foolish management cannot be recovered. A bill founded upon fraud or misconduct which does not allege with certainty and definiteness tangible facts to sustain its general averments of such fraud and misconduct, is insufficient and cannot be sustained.

Smith v. Chase & Baker P. Mfg. Co., 197
Fed., 466 (471).

This salutary and proper rule applies as well to a defendant, asserting an affirmative defense, as to a complainant.

The charge is here, in most general terms, namely,

“That the plaintiffs are collecting money so as to keep them in idleness and others in idleness at the expense of the miners and others in the country who yield to their persuasions or succumb to their bluffs.”

This is iterated and reiterated in paragraphs 19, 20, 21, 22, 23, 24, 25 and 26.

It complains at paragraph 8 of its amended answer (Tr., page 213) that it has paid out over a million dollars. During that time the Western Federation has disbursed many millions of dollars in benefits. The Western Federation has not now and never has accumulated a surplus. Its revenue is fixed by its Constitution; the per diem of its officers is fixed to be paid under certain circumstances, and its duty is that of relieving necessities and bettering the conditions of those engaged in mining, milling and the smelting of ores. To the distressed in Michigan alone it paid out over one million dollars during the year 1914, and it is as a disbursing, adjusting and conciliating factor that the Western Federation has always existed and because the Butte Miners' Union would not stand the burden, but determined that the drain upon its resources should be shared by every western miner; that the Butte Union insisted on forming a Federation to help it sustain that burden, and for more than twenty years the locals varying from sixty to over 120 have

each paid in their share as required by the rules and regulations of the Federation, all of which sums have been paid out and accounted for.

Possessed by an insane desire to destroy, the malcontents destroyed the property of the Butte Union, and its books and papers, and with those records where they cannot be reached, the defendant appellees now come forward, not as a representative of the Butte Miners' Union, but as we assert for their individual aggrandizement, and interpose the plea of *ultra vires* of the Butte Union.

We are here to insist that a status which has been created by the Butte Union shall not, at the instance of the Butte Union, be ignored to the prejudice of the other organizations.

This contention this court has time after time upheld. In a very recent case a corporation had entered into partnership with individuals; capital was advanced, profits shared, and then the corporation sought to plead *ultra vires*, so that it might prove a claim against its partners in bankruptcy, and this court said:

While a contract of partnership entered into by a corporation with natural persons may be *ultra vires* and not enforceable, while executory, nevertheless, after it has been executed, and the corporation has embarked its funds in and supplied goods to the firm such funds and goods cannot be exempted from liability for the partnership debts.

Wallerstein v. Ervin, 112 Fed., 124.

And again in this court,

The principle that a corporation will not be permitted to plead *ultra vires* as a defense to an executed transaction applies where the contract is completely performed on both sides, in which case the court will not interpose to restore either party to its former estate or grant other relief, but relief will be granted if it can be done independently of the contract or a new or independent consideration subsists in support of the transaction sought to be enforced.

City of Santa Cruz v. Wykes, 202 Fed.,
357 (371).

At bar we have the facts that twenty years of close relationship preceded the action in this case, which was taken on petition of the conservative members of the Butte Union to preserve their autonomy, and the new consideration is that as trustee, the Federation is compelled to perform the duty of rehabilitating the union, and if that cannot be done in the limitation set, to hold the property as a trustee for the benefit of the contributing organizations which are entitled to it.

There is no longer any doubt that a corporation can act as freely and as fully in reference to all business, as an individual, and this very freedom is essential to the continuance of a rapid interchange of business and a reciprocity of advantage.

Indeed, one state, Arizona, does provide in terms that in its charter articles a corporation may claim all the powers that an individual would have to con-

tract under like circumstances, and as early as 1872 the state of Illinois had laid down the doctrine that

“Where corporations have exercised powers incidental to those conferred, and in furtherance of the general objects of the corporation, although the subject of the contract may not be within any express right conferred, they will be estopped from denying that they had authority to make such contracts. Good faith to third parties who deal with such corporations and who have no accurate knowledge of the extent of their powers, requires the adoption of this salutary rule. The rule has its foundation in the plainest principles of natural justice.

When such corporations have received the benefit of a contract, if there is nothing in it that is contrary to public policy, there can be no just reason why they should be required to perform it.

Common honesty requires that when a corporation has conducted through a series of years a business incidental to and advantageous to the objects and purposes for which the corporation was created, that although not within the express terms of their charter, they should be estopped to deny that they had rightful authority to make contracts in that regard, and should be held liable for the damages that may accrue in their breach. The liability for the damages arising on the breach results as a corollary from the right to contract.”

Chicago Building Society v. Crowell, 65 Ill., 453 (459-460).

Because individuals merge into a fictional body called a “corporation,” does not alter the fact that the individuals must be held to the same account-

ability, as though unincorporated, and this view is thus expressed in a case decided within one year :

When the rights of the state, the public and the creditors are eliminated, and only the rights of the stockholders are involved, the form of the fictional body termed a "corporation" does not hamper the court in the least in dealing with the rights of the parties.

And that which the individuals composing the corporation might do, will be held to have been done among themselves and will be dealt with without regard to the IMMATERIAL FACT, that they were members of a fictional body.

No citation of cases is necessary to establish the well-settled doctrine that courts of equity will disregard the corporate form, where justice requires it, and its retention is not needed to protect some interest requiring protection.

To permit stockholders to make a unanimous disposition of the corporate property, where no one's else rights are in any way prejudiced, and afterwards to repudiate their action upon the ground that it was beyond the power of the fictional body to do the act, could serve no useful purpose and would be merely available in aid of fraud.

To hold under such circumstances, that those who have unanimously done the act cannot repudiate it is certainly consonant with good morals and fair dealings and violated no principle which is necessary to the protection of the rights of those concerned in and with corporations.

In cases where stockholders have all assented to corporate action and no rights of the state or creditors intervene, the doctrine of estoppel is

fully applicable and the plea of *ultra vires* is unavailing.

Perkins v. Trinity Realty Co., 69 N. J. Equity, 723; 61 Atlantic, 167.

(Citing)—

Taylor on Corporations, Sec. 266.

McCampbell v. Fountain R. R. Co., 111 Tenn., 55; 77 S. W., 10, 70.

Martin v. Niagara Falls Paper Co., 122 N. Y., 165; 25 N. E., 303.

Holmes v. Willard, 125 N. Y., 75; 25 N. E., 1083.

Followed and adopted in

Lincoln Court Realty Co. v. Kentucky etc. Trust Co., 185 S. W., 156 (158).

A review of the authorities on *ultra vires* in its secondary sense shows that the settled law is, that when a corporation goes outside of its business and makes and executes a contract of which it has received the benefits, the courts will not listen to the plea of *ultra vires*.

Crowder State Bank v. Aetna Powder Co., 138 Pac., 392.

First Nat. Bank of Wallace v. Callahan Mining Co., 155 Pac., 673.

National Surety Co. v. Hall-Miller Decorating Co., 104 Miss., 626.

And again in a very late case the court takes occasion to restate the doctrine as follows:

Any act done or agreement made by a cor-

poration by and through its proper and duly authorized officers with an honest view of serving the corporate ends in a substantial sense, which is in itself lawful and not prohibited by charter or otherwise, will be considered within the corporate powers as against an after claim that such act is *ultra vires*.

THE DOCTRINE OF *ULTRA VIRES* CONCERNS ONLY THE CORPORATION IN ITS RELATIONS WITH THE STATE AND WITH ITS STOCKHOLDERS and is never entertained where it will injure innocent third persons.

The defense of *ultra vires* to the enforcement of a corporation contract IS NEVER SUSTAINED BY THE LAW OUT OF REGARD FOR THE CORPORATION and is sustained ONLY when the most persuasive considerations of PUBLIC POLICY are involved.

Huntington Brewing Co. v. McGrew
(Ind.), 112 N. E., 534.

It must also be borne in mind that the Butte Union is not incorporated as a labor union. That it is incorporated as a social and a beneficial corporation. As such social and beneficial corporation it may enter into any contract that is essential to the furtherance of its purposes, and it may *conjointly incorporate* under the laws of Montana, so that it may *conjointly hold property* with other corporations of like purposes.

As a labor union, per se, its incorporation would not be recognized by the state of Montana; but as a corporation "to protect the interests of the member-

ship of the association and to enable it to hold such property as may be necessary for the protection of its good and the advancement of the interest of the same and to enable it to establish subordinate organizations and to become a body politic and corporate in law" (Tr., p. 157), it is given extraordinary privileges of conjointly incorporating and of conjointly holding property, by statute in these words:

"In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property CONJOINTLY and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section, instruct their trustee or director to act in conjunction in incorporating under the provisions of this chapter."

Section 4225, Code of 1907 of Montana.

Briefly, we have before us a beneficial corporation, not for pecuniary purposes, acting CONJOINTLY with another association and conjointly owning and managing real and personal property; we then have the one corporation soliciting the association, its conjoint association, to take charge of its affairs and to rehabilitate it; and under this condition, without appealing to the referendum powers of the conjoint associations, without attempting to use the means provided by the rules of internal discipline, interposing the defense of *ultra vires* to the contract of conjoint association.

Here is a corporation, wholly benevolent, in no way touching considerations of public policy, with a legal and equitable contract, executed for over twenty years, and now a dissolved association, declaring that it had no power to make the contract and asking to be relieved therefrom, not by the association, but by the nominal officers, joined with other appellees herein.

PLEADING INTERNAL DISCIPLINE AND REGULATION.

We say to the court now here, that if in answer to the bill of complaint, the appellees had interposed the plea, that they had not had an opportunity to resort to the usages and customs of the conjoint associations, provided for in emergencies; that they desired a referendum vote upon a matter of association procedure and that they had a plain and adequate remedy within the conjoint associations, and that this must first be availed of, the District Court would have held the plea to be sustained and would have dismissed the bill on the ground that it was the duty of the conjoint associations to settle their differences before coming into court, because all beneficial associations having special objects must conduct their own affairs according to the provisions of their Constitution, their rules and regulations, and it is only when there is an affirmative showing that these

have been exhausted that the courts will entertain a suit of adjustment.

But, the appellees are here on their plea, and we say that the plea of *ultra vires*, without any showing of appeal to internal discipline and regulation, for that reason, among others, is wholly insufficient in law or equity.

On the part of the Federation, it has complied with the laws of its organization; it has received and acted on the petition of the required number; it has asked to take charge and adjust affairs, and it did make an arrangement whereby the affairs of the local were carried on all the trouble some times from 1914 when the charter was destroyed for a year and until the appellees herein agreed on secession. And the bill shows that the Federation proceeded in accordance with the rules and regulations governing the conjoint associations (Tr., 194 to 208, Amended Bill).

Hence the appellees cannot at this time sustain the plea of *ultra vires*; first, because they have not made any offer to do equity or to place the parties to the action in statu quo; second, they have not shown any compliance whatever with the rules and regulations that govern and direct procedure within the conjoint associations; third, that the defense of *ultra vires* cannot be interposed to an executed contract, and where to allow it would be to permit injustice and to do intolerable wrong to the thousands upon

thousands of working miners who for twenty years have relied upon and acted in harmony with the fact that the Butte Union was a constituent part of the Western Federation of Miners.

And further, we declare that the appellees have in nowise sustained their plea, for the rule is, without dissent,

That the burden of proof is upon the parties impeaching the acts of the corporation to show that such acts are not within its corporate powers.

State v. Bank of Charleston (S. C., 1838),
Dud Law, 187.

Kappel v. Chaari Zedek Congregation, 19
Hun. (N. Y.), 364.

Ellerman v. Chicago etc. Stockyards Co.,
49 N. J. E., 217; 23 Atl., 287.

Downing v. Mt. Washington Road Co.,
40 N. H., 230.

International etc. Ass'n No. 2 v. Wall,
153 Ind., 554; 55 N. E., 431.

West v. Averill Grocery Co., 109 Iowa,
488; 80 N. W., 555.

Allen v. West Point etc. Co., 132 Ala.,
292; 31 So., 462.

Chicago Pneumatic Tool Co. v. H. W.
Johns Mfg. Co., 101 Ill. Appeal, 349.

On the trial below the question of the identity of the charters, that is the original charter, issued to Butte Miners' Union, May 15, 1893, and the copy supplied October 7th, 1914, was the main issue

argued in the court. At that hearing the matter was fully gone into.

STATEMENT OF FACTS AS TO CHARTER.

The call of the Butte Miners' Union upon other organizations to join the Butte Union in a Federation was answered and the convention called to order May 15, 1893, and on May 20, 1893, the secretary-treasurer of the Federation was ordered to get 100 charters printed (Tr., p. 511). The unions were at that meeting to the number of seventeen. June 16, 1893, they were given numbers. All had the identical charter.

It would have been subversive of the very purpose of the Federation if it had issued a charter without a forfeiture clause; it would have been against all precedent, because beneficial associations have reciprocal duties, and without reciprocal duties their activities are so limited that they cannot exist. In other words, a single, isolated body cannot accomplish objects of beneficence until it unites with and becomes subject to corresponding bodies throughout the different states, all acknowledging the authority of the supreme lodge of the particular order, from which it receives its general authority. To allow a body that has received moneys and benefits at any time to secede and take with it the books, papers, charters, moneys and properties which it has in possession,

would enable any local or subordinate body to withdraw from the main body and convert to its own use the property entrusted to it and the property which it had acquired as a conjoint associate.

All such property, of every kind and nature upon the secession of the local, or upon its becoming defunct or upon performing any act of forfeiture, becomes at once subject to the trusteeship of the governing body.

Koener Lodge No. 6, K. of P. v. Grand Lodge K. of P. of Indiana, 146 Ind., 639; 45 N. E., 1103.

Grand Lodge K. of P. etc. v. Germania Lodge No. 50; 56 N. J. Eq., 63; 38 Atl., 341.

Schubert Lodge No. 118, K. of P. etc. v. Schubert Kranken Unterstuetzungs-Verin, 56 N. J. Eq., 78; 38 Atl., 347.

Union Benev. Soc. No. 8 etc. v. Martin, 113 Ky., 25; 67 S. W., 38.

The fact that Butte Union is *incorporated* makes no difference in its relations to the superior body, which it itself organized and acts conjointly with.

A late case says:

The mere incorporation of a subordinate lodge of a beneficial association does not render it INDEPENDENT of the ORDER, especially where it adopts a constiution and by-laws recognizing the supremacy of the national council and constitution and laws of the order.

Commonwealth v. Heilman, 241 Pa., 374; 88 Atl., 666.

The union thus made is indissoluble, unless made in accordance with the rules and regulations of the order.

Freundschaft Lodge etc. v. Alchenburger,
235 Ill., 438; 85 N. E., 653.
(Affirming same case, 138 Ill. App., 204.)

TESTIMONY AS TO THE CHARTER.

Our contention is that any testimony regarding the charter dispute is outside of the record in this, that in their answer the appellees do not show any compliance with the rules and regulations of the Federation as to matters in dispute and emergencies provided for in the Constitution, rules and regulations, because a subordinate body is only entitled to appeal to the courts for the redress of administrative wrongs only after following the procedure and exhausting the remedies prescribed by the Constitution.

Schou v. Sotoyome Tribe No. 12 etc., 140
Cal., 254; 73 Pac., 996.

McGuinness v. City Ct. No. 1 etc., 78
Conn., 43; 60 Atl., 1023.

Moore v. National Council K. & L. of
Security, 65 Kan., 452; 70 Pac., 352.

Whitty v. McCarthy, 20 R. I., 792; 36
Atl., 129.

RECEPTION OF THE CHARTER OF 1914.

Briefly, the Union had destroyed its charter in the turbulent times prevailing that year. They

applied for and received a reissuance of the charter. Now let us be governed by the record as to what action they took.

Testimony of Charles Baxter (Tr., p. 357) :

“Some one said we have received a new charter. Pat Leahy picked it up and read it and says ‘we have no use for that; we don’t want to lose our property,’ and threw it on the table; no other action was taken at the meeting.

Later it was tendered to Charley Mahoney as not being a *State* charter (p. 358). Lee tendered it back to Mahoney. The action was never afterwards brought before the local to my knowledge” (p. 408).

Testimony of Frank O’Connor (p. 435) :

“We rejected it (the charter) before we went to the meeting. Leahy objected to it and we decided not to accept it outside of the meeting. At any meeting at which I was present during the fall of 1914, after this charter of 1914 arrived, and the winter or spring of 1915, there was no action taken at any meeting of the union rejecting this charter, that I know of. * * * I conveyed the idea in my mind that we decided the charter was no good and we would not accept it.”

Testimony of Pat Leahy (Tr., p. 441) :

“I made a little talk about this proposition of the charter and said how it read. Well, they said it ain’t worth making a motion about it. They said it was not worth discussing (Tr., p. 443). They threw it in the waste basket. So when I brought it up at the meeting they said

don't waste your time, throw it in the waste basket. I believe it was Lee who threw it in the waste basket (Tr., p. 445). It was tendered to Mahoney by Lee, but not at a regular meeting of the union (Tr., p. 447)."

Further, on November 24, 1914, Pat Lee, the secretary-treasurer of Butte Union, wrote as follows:

"In reply to you concerning the charter, we have received it, but there is a little dispute about putting it up as some of the members wants a copy of the old charter from Helena, Mon't." (Tr., p. 315.)

There is ample provision in the Constitution and the regulations and by-laws to settle all disputes. The Federation was not given any opportunity to know whether the charter was acceptable and why it was not. Pat Lee merely writes that there is a dispute about it with the intimation that as soon as he hears from the secretary of state at Helena, Montana, he will communicate further. Nothing is done. The Federation continued to send its blanks and everything moved along as usual until June, 1915, when the schism occurred and the appellees decided to break the contract.

IDENTITY OF CHARTERS.

If, in its discretion, this court should deem it proper to go into the evidence as to the identity of the charter, that is the charter as issued May 15,

1893, and that sent to the union dated October, 1914, there will be no dissent from the proposition, that having pleaded the differences in the charter as an affirmative defense, the appellees must sustain that defense. Let us glance at the testimony they have introduced.

Charles Baxter (Tr., p. 357) :

“My attention was called to the forfeiture clause in the new charter which I never could recall having seen in the old one. Another difference was a lot of names attached to the old charter, not on the new one, but the body of the charter was the same except for the forfeiture clause. * * * To the best of my recollection it (the old charter) did not contain any forfeiture clause” (Tr., p. 407).

Evidently this witness confused the old state charter received from the state of Montana, in 1881, to which there was attached a large number of names, with the charter received May 15, 1893, and the later charter reissued October 3, 1914.

Jacob Oliver (Tr., p. 415) :

“I can't say exactly what the charter contained. I saw it hanging on the wall. I don't think that charter contained a forfeiture clause. * * * I think on the old charter there was a list of ten names. I saw the last charter received once.”

William E. Deeney (Tr., p. 423) :

“This charter did not contain any forfeiture

clause of the property. We had some discussion about the old charter and as I remember it was to be adopted without the forfeiture clause.

The original charter did not contain the clause. I think Joe Thomas was president, and I don't remember who was secretary." (Tr., p. 430.)

We will ask the court to observe that this witness, Mr. Deeney, was present at the formation of the Federation, and that he recalls the president as Joe Thomas, and can't recall the secretary, but he can distinguish as to particular clauses in the charter. If his recollection was accurate, he would remember that John Gilligan was president of the Federation. He was selected from the Butte union, and W. J. Weeks was secretary and continued to be secretary for some years, and that the minutes of the Federation show no discussion of the charter. That a number of charters were ordered and printed and sent out to the locals, all identical in form and in wording and all containing the names of the officers of the Federation.

Frank O'Connor (Tr., p. 434) :

"When the new charter came I offered my objections. It (the old charter) did not contain a forfeiture clause of the property of the Butte Miners' Union."

Pat Leahy (Tr., p. 441) :

"I examined the old charter since I became a member of Butte union. The charter I refer

to did not contain a forfeiture clause of the property in case of withdrawal, suspension or dissolution. I guess that charter which was received in 1893 was blown to hell or some other foreign country, wherever it went I don't know, but the hall was blown up. * * * I read the charter that came in response to the request. It did not suit me. There were other differences. On the old charter was some twenty names."

Let us now examine the testimony as to the identity of the charters:

Patrick Meany for plaintiffs (Tr., p. 475):

"I contributed towards building the miners' union hall in 1881. I was acquainted with the original charter of 1893. Saw it hanging on the wall. I read it. There was a clause in that charter provided that in the event of withdrawal, suspension or other cause there was to be a change of the ownership of property and it was to become the property of the Federation. That was the general understanding when the Western Federation of Miners was formed. That provision was in the original charter that I saw in Butte Miners' Hall, the one that was issued in 1893."

J. C. Lowney (Tr., p. 569):

"I have been a member of the Federation since it was organized in 1893. I was familiar with the original charter issued by the executive board of the Western Federation of Miners in convention assembled in May and June, 1893, delivered to and used by the Butte Miners' local. The two instruments were identical in form and substance. The clause was identical and alike

and provided in each for the forfeiture of the property and money of the local organization in case they became defunct and went out of business."

James J. Maher (Tr., p. 339) :

"I was secretary-treasurer of the Federation for some time and a member of the Butte Union; I issued charters; that is my signature to exhibit E (Tr., p. 339-340). I saw the original charter (Tr., p. 341) and it was identical with the Aspen charter."

Charles E. Mahoney (Tr., p. 473) :

"I was in the court room when the testimony as to the charter of October, 1914, was given. At that time I informed the men that all these matters should be sent to the Federation. It was never sent to the officers of the Federation. I have seen the original charter. The contracts in the two charters were identical (Tr., p. 474), the one previously destroyed in the wrecking of the hall and this charter here; that is the wording of them."

Ernest Mills (Tr., p. 331) :

"According to the records the first charter was drafted by a committee appointed by the convention and from that there has been no change in the charter other than by order of the convention at one time, the words 'of America' were left out; the style of the charter has been changed by order of the executive board, that is the makeup of it."

William E. Walsh (Tr., p. 335) :

"In 1893 Mr. John Gilligan was president,

W. J. Weeks secretary of the Federation. I know all these men. The names at the bottom of this charter (the ASPEN charter set forth in full at Tr., page 334), William Cunningham, Bart Malloy, T. J. McLennan, Stephen Nichols and Joe Poynton. He went into Idaho and got into some dispute over there.

They were the committee of officers, of the first officers of the Western Federation of Miners and that is how their names come to be on the bottom of this charter. At one time I was an officer of the Western Federation of Miners, a member of the Executive Board, and acted as secretary-treasurer for a few months and as an officer of the Western Federation of Miners I issued several charters and signed them.

They were identical with the charter which you have just exhibited to me; the same charter. I was familiar with the Butte Miners' Union Charter, that is the charter from the Western Federation and it was identically the same in terms to the charter that you have exhibited to me."

We now submit that there can be no shadow of a suspicion but that the charter sent to the Butte Miners' Union under date of October 3, 1914, in response to their application for a new charter, and that delivered to them by the committee of their own officers, were identical and provided as all charters must provide for the proper control of the local's property when it became defunct, was suspended or dissolved.

SUMMARY OF FACTS.

We now have before us, established by overwhelming proof, the following facts:

That in 1893 the Butte Miners' Union desired to form a Federation.

That it formed it mostly out of its own members and called to itself the aid of seventeen subordinate locals.

That in the years that passed those locals numbered from seventeen to sixty and now over one hundred different.

That it has participated in every annual and biennial convention except perhaps one.

That it has contributed its per capita tax and perhaps other assessments for twenty years.

That in 1914 it destroyed its own property; it then appealed for a new charter; this was granted and they worked under it until June, 1915.

On the bringing of this suit they have interposed *ultra vires* their corporate powers; a change in charter.

Both of these defenses in our view have signally failed. We have endeavored to set these matters forth with brevity, but your honors will recall that this means a history of over twenty years, and that with the militant determination of the appellees to seize this property for their own uses they have, with a fertility of imagination and an energy that is

admirable, injected a mass of immaterial matter that of course must be recognized and disposed of.

The issues are plain and clear. The associations have acted so long together, property rights have become so interdependent with the other locals, that plaintiff here could not discharge its duties as trustees if it should supinely permit the appellees to secede from the order with a view to ultimately breaking up the other local organizations that have relied upon a uniform course of action for a time that a right by prescription, by ancient custom, would arise, even if it were not a matter of express procedure.

The judgment is wrong and we feel should be reversed, and to that end we will ask of your honors a patient consideration of the matters to the end that justice may be done.

Respectfully submitted,

CANNING & GEAGAN,
E. P. KELLY,

of Butte, Montana;

HON. O. N. HILTON,
CAESAR A. ROBERTS,
LESLIE M. ROBERTS,

of Denver, Colorado;

Solicitors and of Counsel for Appellants.

United States
Circuit Court of Appeals
For the Ninth Circuit. 6

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

NORTHERN LIGHT MINING COMPANY, a Cor-
poration,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Alaska, Second Division.

Filed

DEC 8 - 1916

F. D. Monckton,

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Answer	7
Answer in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	62
Answer to Amended Complaint in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	55
Assignment of Errors	164
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions	18
Bond on Writ of Error.....	190
Certificate of Clerk U. S. District Court to Transcript of Record	193
Certificate of County Clerk to Judgment-roll, etc.	85
Citation on Writ of Error.....	197
Complaint	1
Complaint in Superior Court in Northern L. M. Co. v. Blue Goose M. Co.....	31
Demurrer to Amended Answer in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	52
Exemplified Copy of Judgment and Order of District Court of Appeal.....	95

EXHIBITS:

Exhibit "A" to Complaint—Lease, May 10, 1907, Between Northern L. M. Co. and Blue Goose Mining Company.....	37
Plaintiff's Exhibit No. 1—Certificate of Secretary of Alaska Re Payment of License Tax for Year 1915 by Northern L. M. Co.	20
Plaintiff's Exhibit No. 2—Exemplified Copy of Sections 1, 4 and 5 of Article VI, Constitution of State of California, etc.....	22
Plaintiff's Exhibit No. 3—Exemplified Copy of Judgment-roll and Remittitur of Superior Court, State of California, Northern L. M. Co. v. Blue Goose M. Co.	31
Plaintiff's Exhibit No. 5—Notice of Appeal in Northern L. M. Co. v. Blue Goose M. Co.	88
Plaintiff's Exhibit No. 6—Exemplified Copy of Order of Supreme Court Transferring Cause to District Court of Appeals	91
Plaintiff's Exhibit No. 7—Exemplified Copy of Judgment and Order of District Court of Appeal.....	95
Plaintiff's Exhibit No. 8—Excerpts from Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 27, 1911	108

Index

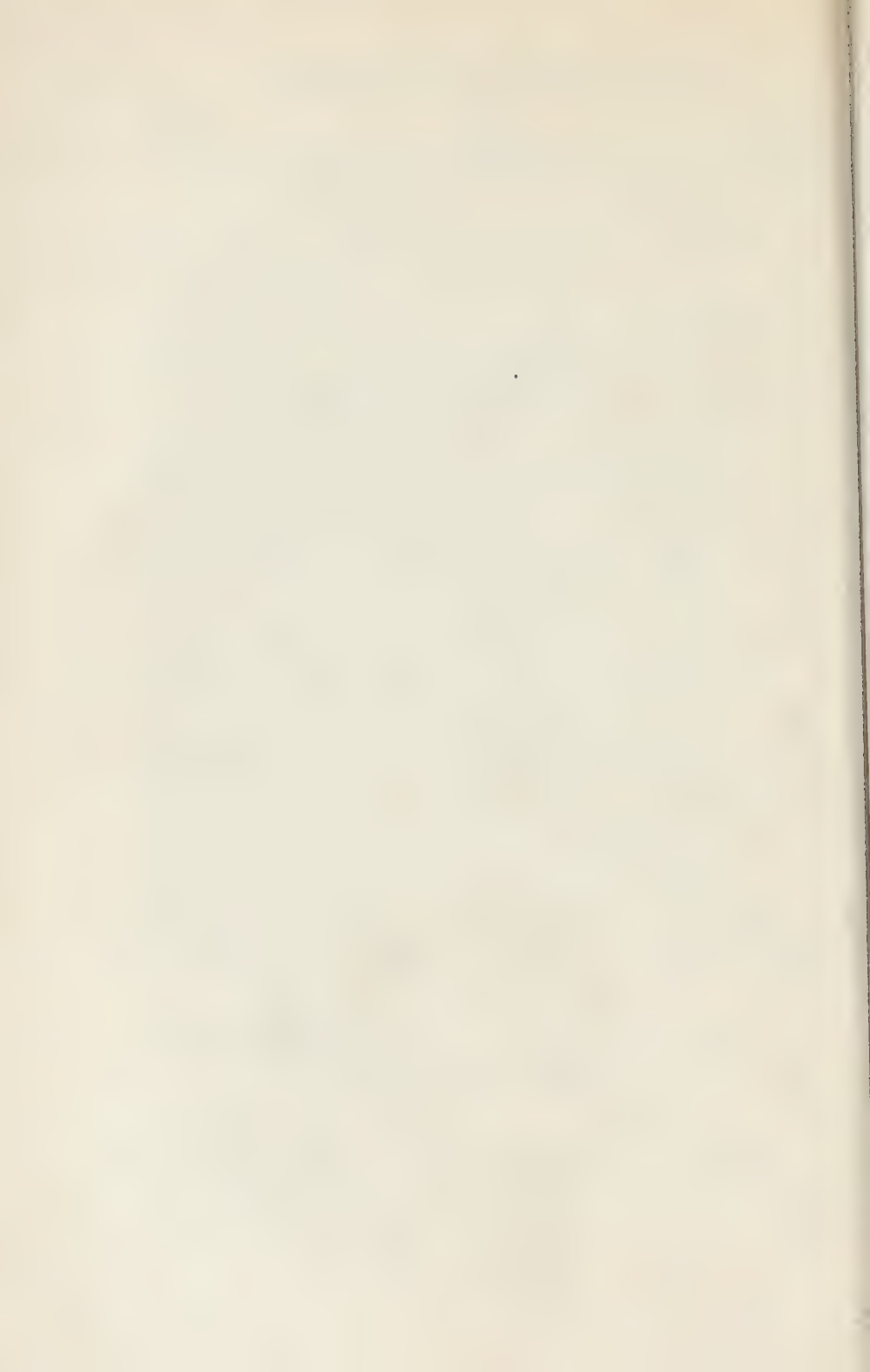
Page

EXHIBITS—Continued:

Plaintiff's Exhibit No. 9—Excerpts from Minutes of Meeting of Board of Direc- tors of Blue Goose M. Co., September 23, 1910	112
Defendant's Exhibit "A"—Articles of In- corporation of Blue Goose M. Co.....	114
Defendant's Exhibit "B" for Identifica- tion—By-laws of Blue Goose M. Co....	121
Defendant's Exhibit "C"—Minutes of Meeting of Stockholders of Blue Goose M. Co., August 1, 1910.....	138
Defendant's Exhibit "D"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 23, 1910.....	139
Defendant's Exhibit "E"—Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 23, 1910.....	141
Defendant's Exhibit "F"—Minutes of Meeting of Stockholders of Blue Goose M. Co., March 7, 1911.....	143
Defendant's Exhibit "G"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 27, 1911.....	144
Findings of Fact and Conclusions of Law.....	73
Findings of Fact and Conclusions of Law, in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	73
Instruction to Jury	14
Judgment	16

Index	Page
Judgment in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	80
Judgment of District Court of Appeal of State of California in Northern L. M. Co. v. Blue Goose M. Co.....	83
Motion for Judgment on First Count on the Pleadings, in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	54
Motion to Strike Out Portions of Amended An- swer in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	53
Names and Addresses of Attorneys of Record	1
Order Allowing Writ of Error.....	189
Order Enlarging Time to December 2, 1916, to File Record and Docket Cause.....	198
Order Enlarging Time to December 28, 1916, to File Record and Docket Cause.....	200
Order Settling Bill of Exceptions.....	163
Petition for Writ of Error.....	188
Plaintiff's Amendment to Second Count of Com- plaint in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	44
Plaintiff's Second Amendment to Second Count of Amended Complaint in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	46
Reply.....	13
TESTIMONY ON BEHALF OF PLAINTIFF:	
BACHELDER, J. A.....	101
Cross-examination.....	104

Index	Page
TESTIMONY ON BEHALF OF PLAINTIFF	
—Continued:	
ORTON, IRA D.....	99
Cross-examination.....	100
RUSSELL, G. H.....	99
Cross-examination	99
TESTIMONY ON BEHALF OF DEFENDANT:	
COLE, J. J.....	109
Cross-examination.....	112
LINDEBERG, JAFET.....	150
Cross-examination.....	156
Redirect Examination.....	156
Recross-examination	158
LOMEN, G. J.....	129
Cross-examination	135
Redirect Examination	136
Recross-examination	136
ORTON, IRA D.	159
STEVENSON, L.	137
Cross-examination	149
Verdict	15
Writ of Error	194



Names and Addresses of Attorneys of Record.

IRA D. ORTON, Nome, Alaska,

GEO. B. GRIGSBY, Nome, Alaska,

Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska,

O. D. COCHRAN, Nome, Alaska,

Attorneys for Defendant. [2*]

*In the United States District Court in and for the
District of Alaska, Second Division.*

No. 2616.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Complaint.

Northern Light Mining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in said State and a citizen and resident of said State, brings this action against Blue Goose Mining Company, a corporation organized and existing under and by virtue of the laws of the Territory of Alaska and being a citizen and resident of the Territory of Alaska, and for cause of action against said defendant this plaintiff alleges:

*Page-number appearing at foot of page of original certified Transcript of Record.

I.

That this plaintiff now is and at all the time herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business at the City and County of San Francisco, in said State, and a citizen and resident of said State of California. That the plaintiff has paid its license tax to the Territory of Alaska last due, and has duly paid all license taxes accruing against it in favor of the Territory of Alaska.

II.

That the defendant, Blue Goose Mining Company, now is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the Territory of Alaska, with its principal place of business and office at the City of Nome in said Territory, and a citizen and resident of said Territory of Alaska and a citizen and resident within the District of Alaska. [3]

III.

That at all the times hereinafter mentioned the Superior Court of the State of California in and for the City and County of San Francisco, in the State of California, was a court of general jurisdiction and a court of record duly created and organized by and pursuant to the laws of the said State of California.

IV.

That on or about the 2d day of June, 1911, the plaintiff herein, said Northern Light Mining Company, duly commenced an action in said Superior Court of the State of California, in and for the City

and County of San Francisco, against the defendant herein, Blue Goose Mining Company, said action in said Superior Court being entitled "Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant," and being numbered 36,081 on the files of said Superior Court. That said action was commenced in said Superior Court by the filing by said Northern Light Mining Company of a complaint therein against said Blue Goose Mining Company on said 2d day of June, 1911; that on said date summons was duly issued in said cause and was thereafter duly served on said defendant, Blue Goose Mining Company, personally, in said City and County of San Francisco, State of California, by serving upon said defendant personally in said city and county, a copy of said summons, together with a copy of said complaint; that thereafter, and prior to the entry of judgment in said action as hereinafter set out, said defendant, Blue Goose Mining Company, duly appeared in said action in said Superior Court and duly filed therein its verified answer to the said complaint filed by said Northern Light Mining Company; that thereafter such proceedings were had and taken in said action in said Superior Court that on the 22d day of March, 1912, judgment was given and made in said action by said Superior Court in favor of the plaintiff, Northern Light Mining Company, and against said Blue Goose Mining Company in the sum of Ten Thousand Nine Hundred Eighty-six and 68/100 (\$10,986.68) Dollars, together with interest thereon at the rate of seven (7) per cent per annum

from June 2d, 1911, [4] and costs amounting to \$55; that is to say, judgment was rendered in favor of the plaintiff and against the defendant in the total sum, including principal and interest, and costs, of Eleven Thousand Six Hundred Sixty-one & 20/100 (\$11,661.20) Dollars. That said judgment was on the 26th day of March, 1912, duly entered in the judgment record of said Superior Court. That said Superior Court was at all the times herein mentioned and now is the competent Jurisdiction to hear and determine said action of said Northern Light Mining Company, plaintiff, against Blue Goose Mining Company, defendant, and to render judgment therein, and that said Superior Court at and prior to the time of the rendering and entering of said judgment in said action in favor of this plaintiff and against said defendant as aforesaid, had full and complete jurisdiction of both said plaintiff and said defendant to said action, and was in all things and particulars duly authorized and empowered to render said judgment in said action in favor of said plaintiff and against said defendant, as aforesaid.

V.

That after the rendition and entry of said judgment as aforesaid, plaintiff moved the said Superior Court for a new trial in said action, and the said Superior Court thereafter made and entered its order denying said motion. That thereafter plaintiff appealed from said judgment and from said order denying its motion for a new trial to the Supreme Court of the State of California. That thereafter the said Supreme Court duly and regularly

transferred said appeal to the District Court of Appeal of the State of California, in and for the Third Appellate District. That thereafter such proceedings were had and taken in said action that the said District Court of Appeal rendered its decision affirming the said judgment and said order of said Superior Court. That thereafter and prior to the commencement of this action a remittitur was duly and regularly sent down from said District Court of Appeal to said Superior Court and filed therein, affirming said judgment and said order, and thereafter said judgment became final. [5]

VI.

That under the laws of the State of California as promulgated in Section 1920 of the Civil Code of the State of California, interest is payable on judgments recovered in the courts of said State at the rate of seven (7) per cent per annum.

VII.

That no part of said judgment has been paid and that the whole amount of the principal sum thereof, to wit: \$11,661.20, together with interest thereon at the rate of seven per cent (7%) per annum from said 22d day of March, 1912, is now wholly due, owing and unpaid from said Blue Goose Mining Company to this plaintiff.

WHEREFORE, plaintiff prays judgment against said defendant, Blue Goose Mining Company, for said principal sum of Eleven Thousand, six hundred and Sixty-one and 20/100 (\$11,661.20) Dollars, and for interest thereon from the 22d day of March, 1912,

at the rate of seven (7) per cent per annum, and for its costs of suit herein.

IRA D. ORTON.

GEORGE B. GRIGSBY.

United States of America,
Territory of Alaska,—ss.

G. H. Russel being first duly sworn, deposes and says: That he is the managing agent in the Territory of Alaska of the Northern Light Mining Company, a corporation, the plaintiff in the foregoing action; that he has read the above and foregoing complaint and knows the contents thereof, and that said complaint is true as affiant verily believes.

G. H. RUSSELL.

Subscribed and sworn to before me this 13th day of July, 1915.

[Notarial Seal]

J. V. SHELDON,

Notary Public, Territory of Alaska.

My commission expires Nov. 12, 1916.

[Endorsed]: #2616. In the United States District Court, in and for the District of Alaska, Second Division. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Complaint. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 14, 1915. G. A. Adams, Clerk. By ———, Deputy. Ira D. Orton and Geo. B. Grigsby, Attys. for Pltff. [6]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Amended Answer.

Comes now the defendant Blue Goose Mining Company, a corporation, and answering the complaint of the plaintiff filed herein, admits, denies and alleges:

I.

Answering paragraph one of plaintiff's complaint defendant alleges that it has no knowledge or information sufficient to form a belief as to whether or not the plaintiff has paid its license tax to the Territory of Alaska last due, or has paid all license taxes accruing against it in favor of the Territory of Alaska, and therefore denies the same and demands strict proof thereof.

II.

Answering paragraph three of said complaint defendant alleges that it has no knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, and therefore denies the same and demands strict proof thereof.

III.

Answering paragraph four of said complaint, defendant denies knowledge or information sufficient to form a belief as to the allegations that on or about the 2d day of June, 1911, the plaintiff herein, said Northern Light Mining Company, duly commenced an action in the Superior Court of the State of California, in and for the City and County of San Francisco, against the defendant herein, Blue Goose Mining Company, said action in said Superior Court being entitled "Northern Light Mining Company, [7] a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant," and being numbered 36,081 on the files of said Superior Court; that said action was commenced in said Superior Court by the filing by said Northern Light Mining Company of a complaint therein against said Blue Goose Mining Company, on the 2d day of June, 1911, and that on said date a summons was duly issued in said cause, and defendant therefore denies said allegation and demands strict proof thereof.

Further answering said paragraph the defendant denies that on the 2d day of June, 1911, or thereafter, that the summons alleged in said paragraph of said complaint, was duly or at all served on this defendant Blue Goose Mining Company personally or at all, in the City and County of San Francisco, State of California, or elsewhere, by serving upon said defendant personally, or at all, in said city and county of San Francisco, or elsewhere, a copy of said summons, together with a copy of the complaint in said action, or at all. And defendant fur-

ther denies that thereafter and prior to the entry of any judgment in said alleged action, as set out in said complaint, or at all, the said defendant Blue Goose Mining Company duly, or at all, appeared in said alleged action in said Superior Court, or filed therein its verified answer to the complaint filed by said Northern Light Mining Company.

And further answering said paragraph of said complaint, the defendant denies that said Superior Court had, or prior to the time of the rendering and entering of the judgment alleged in said paragraph of said complaint in said action in favor of the plaintiff and against the defendant, had full, complete or any jurisdiction of this defendant, or that said Court was duly authorized or empowered to render any judgment in said action in favor of said plaintiff and against this defendant. The defendant denies knowledge or information sufficient to form a belief as to all other matters or things alleged in said paragraph of said complaint, and therefore denies the same and demands strict proof thereof. [8]

IV.

Answering paragraph five of said complaint, defendant denies that after the rendition and entry of the judgment alleged in said complaint, or at all, the defendant moved the said Superior Court for a new trial in said action, or that the defendant thereafter appealed from any judgment or order denying a motion for a new trial in said alleged action, or at all, to the Supreme Court of the State of California. And as to all other matters or things alleged in said paragraph of said complaint, the defendant denies

knowledge or information sufficient to form a belief and therefore denies the same and demands strict proof thereof.

V.

Answering paragraph six of said complaint, defendant denies that it has knowledge or information sufficient to form a belief as to the matters and things therein alleged, and therefore denies the same and demands strict proof thereof.

VI.

Answering paragraph seven of said complaint, the defendant admits that no part of said judgment as alleged in said complaint has been paid, but denies that the whole amount of the principal sum thereof, to wit: \$11,661.20, or any part thereof, together with interest thereon at the rate of seven per cent (7%) per annum from the 22d day of March, 1912, is due from this defendant to the plaintiff, or that said amount, or any part thereof, is due or owing from said Blue Goose Mining Company to the plaintiff.

VII.

Further answering said complaint, defendant alleges that at the time said action was commenced, as set forth and alleged in the plaintiff's complaint, and from that time up to, and at the time said supposed judgment was rendered, as alleged in plaintiff's complaint, the said defendant was a corporation duly organized under the laws of the Territory of Alaska, and was a citizen of the said Territory of Alaska and a resident therein, and not elsewhere, and was not served with process [9] and had no notice of the pendency of said alleged action in said

Superior Court for the City and County of San Francisco, State of California, and that it, said defendant, never appeared thereto or therein in person or by attorney, and did not, at the time of the alleged commencement of said action, or the pretended service of summons therein or the entry of said alleged judgment, live within the State of California, or have within said State of California any agent, officer, representative, or employee authorized to accept service of process or upon whom services of process could be made, or authorized to appear in said alleged action, or otherwise, nor did the defendant, during any of said time, have any property within the State of California, or had any business in said State, or within the jurisdiction of the said court alleged to have rendered said judgment.

WHEREFORE defendants demand that such action be dismissed, and for its costs and disbursements herein incurred.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendant.

United States of America,

Territory of Alaska,

Second Division,—ss.

J. J. Cole, being duly sworn, on oath deposes and says:

That he is *the* a director and V. President of the said defendant Blue Goose Mining Company; that he has read the foregoing amended answer, knows the contents thereof, and the same is true as he verily believes.

J. J. COLE.

Subscribed and sworn to before me this 17 day of July, 1916.

[Notarial Seal]

O. D. COCHRAN,

Notary Public for the Territory of Alaska, residing at Nome.

My commission expires June 27th, 1917.

Service of the within and foregoing amended answer hereby acknowledged this — day of July, 1916.

Attorney for Plaintiff. [10]

[Endorsed]: #2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Cor., Defendant. Amended Answer. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Jul. 17, 1916. G. A. Adams, Clerk. By M., Deputy. G. J. Lomen, O. D. Cochran, Attorneys for Defendant. [11]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Reply.

Comes now the plaintiff in the above-entitled action and replies to the answer of the defendant herein as follows:

I.

Replying to the affirmative matter set forth in paragraph VII of said answer, plaintiff admits that the defendant was at all times a corporation duly organized under the laws of the Territory of Alaska, and was a citizen of said Territory and a resident therein, but denies each and every other allegation of said paragraph VII.

WHEREFORE plaintiff demands judgment as prayed for in its complaint.

IRA D. ORTON,
GEORGE B. GRIGSBY,
Attorneys for Plaintiff. [12]

United States of America,
Territory of Alaska,—ss.

G. H. Russell being first duly sworn, deposes and says: That he is the managing agent of the plaintiff corporation, Northern Light Mining Company; that he has read the above and foregoing reply, knows the contents thereof and believes the same to be true.

G. H. RUSSELL.

Subscribed and sworn to before me this 25th day of October, 1915.

[Notarial Seal] LAWRENCE S. KERR,
Notary Public, Territory of Alaska.
My commission expires May 9, 1917.

United States of America,
District of Alaska,—ss.

Due service of the within reply is hereby accepted at Nome, Alaska, this 30th day of October, 1915, by receiving a copy thereof.

O. D. COCHRAN,
Of Attorney for Deft.

[Endorsed]: 2616. In the District Court for the District of Alaska, Second Division. Northern Light M. Co., Plaintiff, vs. Blue Goose Mining Co., Defendant. Reply. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By ———, Deputy. D. Geo. B. Grigsby, Ira D. Orton, Attorneys for Plaintiff. [13]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Instruction to Jury.

The jury are instructed to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 22d day

of March, 1912, at the rate of 7% per annum, amounting in the aggregate to the sum of \$15,189.

J. R. TUCKER,
District Judge.

Nome, Alaska, July 18, 1916.

[Endorsed]: #2616. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 18, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [14]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find a verdict in favor of the plaintiff and against the defendant for the sum of \$15,189.

Dated at Nome, Alaska, July 18th, 1916.

W. E. BARTHOLOMEW,
Foreman.

[Endorsed]: #2616. In the District Court, Alaska, Second Division. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose

Mining Company, a Corporation, Defendant. Verdict. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 18, 1916. G. A. Adams, Clerk. By ———, Deputy. L. [15]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Judgment.

The above-entitled action having been regularly tried before the above-entitled Court, sitting with a jury, at a special term of the above-entitled court, which was begun and holden in the City of Nome, Territory of Alaska, commencing on the 5th day of July, 1916; Messrs. Ira D. Orton and Geo. B. Grigsby, appearing as attorneys for the plaintiff, and Messrs. O. D. Cochran and G. J. Lomen, appearing as attorneys for the defendant; and the jury after having heard the evidence and the instructions of the Court, having on the 18th day of July, 1916, returned a verdict in said action, in words and figures as follows, to wit:

*“In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find a verdict in favor of the plaintiff and against the defendant for the sum of \$15,189.

Dated at Nome, Alaska, July 18, 1916.

W. E. BARTHOLOMEW,

Foreman.”

And a motion for a new trial in said action, interposed by the defendant, having been denied;

NOW, THEREFORE, by virtue of the law and the premises it is by the Court Ordered and Adjudged, that the plaintiff, Northern Light Mining Company, a corporation, do have and recover of and from [16] the defendant, the Blue Goose Mining Company, a corporation, the sum of Fifteen Thousand One Hundred and Eighty-nine Dollars (\$15,189), together with interest thereon at the rate of 8% per annum from the 18th day of July, 1916, together with costs of suit taxed at \$42.15.

Done in open court at Nome, Alaska, this 5th day of August, 1916.

J. R. TUCKER,
Judge of the District Court, District of Alaska,
Second Division.

[Endorsed]: No. 2616. District Court, Alaska, Second Div. Northern Light Mining Company, Plaintiff, vs. Blue Goose Mining Company, Defendant. Judgment. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. Orders and Judgments, Vol. III, page 288c. Jd. Docket #3, page 18. Ira D. Orton, Atty. for Plaintiff. [17]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, That the above-entitled action came on for trial in Nome, Alaska, on the 17th day of July, 1916, at a special term of the above-entitled court regularly called and held in the town

of Nome, Territory of Alaska, before the Honorable J. R. Tucker, Judge of the above-entitled court sitting with a jury. Ira D. Orton and George B. Grigsby appeared for the plaintiff and G. J. Lomen and O. D. Cochran appeared for the defendant.

Thereupon a jury having been duly and regularly empaneled and sworn to try the above-entitled action the following proceedings were had and testimony taken, to wit:

Mr. Lomen, on behalf of the defendant, asked leave of the Court to file an amended answer to the complaint of the plaintiff, to the filing of which Mr. Orton, on behalf of the plaintiff, objected to the filing of said amended answer on [18] the grounds that same was offered too late. The Court allowed the amended answer to be filed over the objection of the plaintiff. Whereupon it was agreed between counsel for plaintiff and defendant, that plaintiff's reply to the original answer of the defendant would stand as a reply to the amended answer.

Mr. Orton requested the instructions to the jury to be put in writing.

Mr. ORTON.—If the Court pleases, I first offer in evidence certificate signed by the Secretary of Alaska to the effect that the Northern Light Mining Company paid its license tax for the year 1915.

Mr. COCHRAN.—We object to the offer on the ground that the same is immaterial, and not showing that the plaintiff has paid its tax to the Territory for the year 1916.

The COURT.—The objection overruled and the paper will be received in evidence.

To which ruling of the Court the defendant excepted and an exception was allowed, said certificate being admitted in evidence by the Court and marked "Plaintiff's Exhibit No. 1," and being as follows:

**Plaintiff's Exhibit No. 1—Certificate of Secretary
of Alaska Re Payment of License Tax for Year
1915 by Northern L. M. Co.**

"United States of America,
Territory of Alaska,—ss.

I, Charles E. Davidson, Secretary of the Territory of Alaska, do hereby certify that the Northern Light Mining Company, [19] a foreign corporation doing business in the Territory of Alaska, on December 28, 1914, paid its territorial license fee for the year nineteen hundred and fifteen (1915), in the sum of Fifteen (\$15) Dollars, as required by Section Six of Chapter 11 of the 1913 Session Laws of Alaska.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Territory of Alaska, at Juneau, this fourteenth day of August, A. D. 1915.

[Seal] (Signed) CHARLES E. DAVIDSON,
Secretary of Alaska.

(Canceled I. R. S. Ten Cents.)

[Endorsed on Back]: #2016. In the District Court, Territory of Alaska, Second Division. Northern Light Min. Co. vs. Blue Goose Min. Co. Plt's Ex. 1. Deft's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy."

Mr. ORTON.—We now offer an exemplified copy of [20] sections 1, 4 and 5, of article 6 of the Con-

stitution of the State of California, and section 1920 of the Civil Code of said State under the great seal of the State of California, certified by the Secretary of State. The purpose is to show the jurisdiction of the various courts, Superior, Supreme and District Court of Appeals.

Mr. COCHRAN.—We object to the introduction of the certificate for the reason that the certificate recites that sections 1, 4 and 5 of article 6 of the Constitution of the State of California, are now in full force and effect, which is dated on the 15th day of September, 1915, long subsequent to the date alleged as the recovery of the judgment sued on. The judgment sued on is alleged to have been recovered on the 21st day of June, 1911. This is four years subsequent that the Secretary of State certifies these sections of the Constitution to have been in force. There is no presumption arising that these laws were in force four years prior to the date of such certificate, and we object to the admission of the same as being incompetent, irrelevant and immaterial.

The COURT.—The objection overruled, and the certificate will be received in evidence.

To which ruling of the Court the defendant excepted and an exception was allowed.

Certificate admitted and read in evidence and marked Plaintiff's Exhibit 2, as follows:

**Plaintiff's Exhibit 2—Exemplified Copy of Sections
1, 4 and 5 of Article VI, Constitution of State of
California, etc.**

**“STATE OF CALIFORNIA, DEPARTMENT OF
STATE.**

I, Frank C. Jordan, Secretary of State of the State
[21] of California, do hereby certify that I have
carefully compared the annexed copies of sections
1, 4 and 5 of article VI of the Constitution of the State
of California, and section 1920 of the Civil Code
of said State, now in full force and effect, with the
originals on file in my office, and that the same are
correct transcripts therefrom, and of the whole
thereof.

IN WITNESS WHEREOF, I have hereunto set
my hand and have caused the Great Seal of the State
of California to be affixed hereto this 15th day of
September, A. D. 1915.

FRANK C. JORDAN,
Secretary of State.

[Great Seal of the State of California.] By _____,
Deputy.
(Canceled I. R. S. Ten Cents.)

ARTICLE VI.

Section 1. The judicial power of the State shall
be vested in the Senate, sitting as a court of impeach-
ment, in a Supreme Court, District Courts of Appeal,
Superior Courts and such inferior courts as the
Legislature may establish in any incorporated city
or town, township, county, or city and county.

Sec. 4. The Supreme Court shall have appellate jurisdiction on appeal from the Superior Courts in [22] all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to Two Thousand Dollars; also, in all such probate matters as may be provided by law; also on questions of law alone, in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a District Court of Appeals, which shall be ordered by the Supreme Court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court of Appeal, or before any judge thereof.

The State is hereby divided into three appellate districts, in each of which there shall be a District Court of Appeal consisting of three justices. The first district shall embrace the [23] following counties: San Francisco, Marin, Contra Costa, Alameda,

San Mateo, Santa Clara, Fresno, Santa Cruz, Monterey, and San Benito.

The second district shall embrace the following counties: Tulare, Kings, San Luis Obispo, Kern, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego.

The third district shall embrace the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Mariposa, Madera, Merced, Tuolumne, Alpine, and Mono.

The Supreme Court, by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

Said District Courts of Appeal shall hold their regular sessions respectively at San Francisco, Los Angeles, and Sacramento, and they shall always be open for the transaction of business.

The District Courts of Appeal shall have appellate jurisdiction on appeal from the Superior Courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, [24] and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in Justices' Courts), in proceedings in insolvency, and in actions to prevent or abate a nui-

sance; in proceedings of mandamus, certiorari, and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (except cases in which appellate jurisdiction is given to the Supreme Court); also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the Supreme Court which shall be ordered by the Supreme Court to be transferred to a District Court of Appeal for hearing and decision. The said courts shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the District Court of Appeal of his district, or before any Superior [25] Court within his district, or before any Judge thereof.

The Supreme Court have power to order any cause pending before the Supreme Court to be heard and determined by a District Court of Appeal, and to order any cause pending before a District Court of Appeal to be heard and determined by the Supreme Court. The order last mentioned may be made before judgment has been pronounced by a District

Court of Appeal, or within thirty days after such judgment shall have become final therein. The judgments of the District Courts of Appeal shall become final therein upon the expiration of thirty days after the same shall have been pronounced.

The Supreme Court shall have power to order causes pending before a District Court of Appeal for one district to be transferred to the District Court of Appeal of another district for hearing and decision.

The Justices of the District Courts of Appeal shall be elected by the qualified electors within their respective districts at the general state elections at the times and places at which Justices of the Supreme Court are elected. Their terms of office and salaries shall be the same as those of Justices of the Supreme Court, and their salaries shall be paid by the State. Upon the ratification by the people of this amendment the [26] Governor shall appoint nine persons to serve as Justices of the District Courts of Appeal until the first Monday after the first day of January in the year 1907; provided, that not more than six of said persons shall be members of the same political party. At the election in the year 1906 nine of such justices shall be elected as above provided, and the justices of each District Court of Appeal shall so classify themselves by lot that one of them shall go out of office *at* at the end of four years, one of them at the end of eight years, and one of them at the end of twelve years; an entry of such classification shall be made in the minutes of the court, signed by the three justices thereof, and a duplicate thereof filed in the office of the Secretary of State. If any vacancy oc-

cur in the office of a Justice of the District Courts of Appeal, the Governor shall appoint a person to hold office until the election and qualification of a justice to fill the vacancy; such election shall take place at the next succeeding general State election as aforesaid; the justice then elected shall hold the office for the unexpired term.

One of the justices of each of the District Courts of Appeal shall be the presiding justice thereof, and as such shall be appointed or elected as the case may be. The presence of three justices shall be necessary for the transaction of any business by such court, except such as may be done at chambers, and the concurrence of three justices shall be [27] necessary to pronounce a judgment.

Whenever any justice of the Supreme Court is for any reason disqualified or unable to act in a cause pending before it, the remaining justices may select one of the Justices of the District Court of Appeal to act pro tempore in the place of the justice so disqualified or unable to act.

Whenever any Justice of a District Court of Appeal is for any reason disqualified or unable to act in any cause pending before it, the Supreme Court may appoint a Justice of the District Court of Appeal of another district, or a Judge of a Superior Court who has not acted in the cause in the court below, to act pro tempore in the place of the justice so disqualified or unable to act.

No appeal taken to the Supreme Court or to a District Court of Appeal shall be dismissed for the reason only that the same was not taken to the proper

court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All statutes now in force allowing, providing for, or regulating appeals to the Supreme Court shall apply to appeals to the District Courts of Appeal so far as such statutes are not inconsistent with this article and until the Legislature shall otherwise provide.

The Supreme Court shall make and adopt [28] rules not inconsistent with law for the government of the Supreme Court and of the District Courts of Appeal and of the officers thereof, and for regulating the practice in said courts.

Sec. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage; and of all such special cases and proceedings as are not otherwise provided for, and said court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in

inferior courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State provided, that all actions for the recovery of possession of, quieting the title to, or for the enforcement of liens upon real estate [29] shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated. Said courts, and their judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

Sec. 1920. Interest is payable on judgments recovered in the Courts of this State, at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form.

[Great Seal of the State of California.]

[Endorsed on Back]: #2616. In the District Court, Territory of Alaska, Second Division. Northern Light M. Co., Plaintiff, vs. Blue Goose M. Co. Plt's. Ex. 2. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By —————, Deputy. [30]

Mr. ORTON.—We next offer in evidence the exemplified copy of the Judgment-roll and Remittitur of the Superior Court for the State of California, City and County of San Francisco as sued on in this action.

Mr. LOMEN.—If the Court pleases, the defendant objects to the introduction of this Judgment-roll for the reason that the records so offered is incompetent, irrelevant and immaterial, and no proper foundation has been *lain* for the admission of the same.

Mr COCHRAN.—We further interpose an objection of the admissibility of this Judgment-roll in evidence because it is insufficient within itself to show *prima facie* jurisdiction over the defendant by the court of California purporting to have rendered such judgment, and if your Honor should hold the Judgment-roll sufficient to be entitled to be received in evidence, then we want to make an offer to prove the want of jurisdiction preliminary to the receiving of the document in evidence.

The COURT.—I think the Court will allow it to be admitted.

To which ruling of the Court the defendant excepted and an exception was allowed.

Mr. COCHRAN.—We now move the Court at this time to be permitted to offer evidence preliminary to the acceptance of the Judgment-roll in evidence showing want of jurisdiction in the court of California over the defendant.

The COURT.—I overrule the motion. [31]

To which ruling of the Court the defendant duly excepted and an exception was allowed:

Said Judgment-roll was thereupon received and read in evidence and marked "Plaintiff's Exhibit No. 3" and is as follows:

**Plaintiff's Exhibit No. 3—Exemplified Copy of
Judgment-roll and Remittitur of Superior
Court, State of California, Northern L. M. Co. v.
Blue Goose M. Co.**

*“In the Superior Court of the State of California
in and for the City and County of San Francisco.*

**NORTHERN LIGHT MINING COMPANY, a
Corporation,**

Plaintiff,

vs.

**BLUE GOOSE MINING COMPANY, a Corpora-
tion,**

Defendant.

COMPLAINT.

Now comes the plaintiff above-named and complains of the above-named defendant, and for cause of action alleges:

I.

That the plaintiff is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California:

II.

That the defendant is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the District of Alaska and is [32] now, and at all times herein mentioned was doing business in the State of California:

III.

That on or about the 10th day of May, 1907, in the City and County of San Francisco, State of California, the plaintiff and defendant entered into and executed a written agreement or lease, copy of which is attached hereto, marked exhibit "A" and made an integral part of this complaint.

IV.

That in and by said written agreement or lease the plaintiff granted, leased, demised and let unto the defendant for a period of three years commencing on the 10th day of May, 1907, and expiring on the 10th day of May, 1910, certain placer mining claims situated in the Council City Recording District in the District of Alaska, and known as:

Placer Mining Claim No. 1 below Discovery on Ophir Creek;

Placer Mining Claim No. 2 below Discovery on Ophir Creek:

Placer Mining Claim No. 3 below Discovery
W. H. P. on Ophir Creek;

Placer Mining Claim No. 31½ below Discovery on Ophir Creek;

(Sometimes called "The Oceanview.")

The "Richmond Bench" situated easterly of Claim No. 1 below Discovery;

The "Eureka Mine" situate easterly of Claim No. 2 below Discovery;

"Northern Light Bench" situate easterly of claim No. 3 below Discovery;

All of said claims being on or adjacent to Ophir Creek in the district aforesaid;

Together with the appurtenances and the rights and privileges to prospect and mine the same for gold and other [33] precious minerals and to extract and reduce the same to any commercial value.

V.

That in consideration of said lease the lessee, the defendant herein, covenanted and agreed with the plaintiff to enter upon said mining claims and premises afore described and to work the same mine-fashion with its steam dredger known as the "Alpha" in a manner necessary to good and economical mining, so as to take out the greatest amount of gold and precious metals possible, with due regard to the safety, development and preservation of said premises as workable mines,

Further, the defendant agreed to work all the gold-bearing gravel on said claims from rim to rim wherever it was practical to float said dredger and to do said work as steadily and continuously from the date of this lease as the weather and season of each year would permit during the aforesaid term; and said defendant further agreed to pay and deliver to said lessor as royalty and rent thirty-three and one-third ($33\frac{1}{3}$) per cent of all gold and precious minerals extracted from said premises during any single year until the gross yield during any single year should have amounted to fifty thousand dollars (\$50,000), and thereafter during said year to pay and deliver to said lessor as rent and royalty forty (40) per cent of all gold and precious minerals extracted from said premises in excess of said fifty thousand dollars (\$50,000) and until the gross yield during any

single year should have amounted to Two Hundred Thousand Dollars (\$200,000); [34]

And defendant further agreed to pay to the plaintiff as rent and royalty for said premises fifty (50) per cent of all gold and precious minerals extracted in any single year in excess of Two Hundred Thousand Dollars (\$200,000);

These royalties to be so paid were to be of like assay as those retained by the lessee and payment was to be made at such time and place as the lessor, the plaintiff herein should direct.

VI.

That thereafter, upon the execution and delivery of said agreement of lease, the defendant entered upon the afore-described premises and commenced mining thereon as aforesaid;

That during the year 1909 the defendant extracted gold from said premises valued in the sum of Sixty-two Thousand Eighty-four and 64/100 Dollars (\$62,084.64);

That the said sum of Sixty-two Thousand Eighty-four and 64/100 Dollars (\$62,084.64) the plaintiff was entitled under its said contract to the sum of Twenty-one Thousand Five Hundred and 51/100 Dollars (\$21,500.51);

That the defendant has paid to the plaintiff the sum of Eighteen Thousand Eight Hundred Eighty-eight and 83/100 Dollars (\$18,888.83) and no more; and that there is now due, owing and unpaid to the plaintiff from the defendant the sum of Two Thousand Six Hundred Eleven and 68/100 Dollars (2611.68).

And for a further, second and separate cause of action against defendant, this plaintiff alleges: [35]

I.

The plaintiff hereby refers to paragraphs I, II, III, IV and V of its first cause of action in this complaint and makes the allegations set forth in said paragraphs an integral part of this count.

That thereafter upon the execution and delivery of said agreement or lease the defendant entered in and upon the afore-described premises and commenced mining thereon and continued mining on said premises until on or about the first day of September, 1909; that during said time that the defendant mined on said premises it did not work all the gold-bearing gravel on said claims from rim to rim wherever it was practical to float its dredger known as the "Alpha";

That on or about the first day of September, 1909, the defendant without the consent of the plaintiff moved its said dredger, the "Alpha," from said premises and discontinued dredging and mining thereon and that from said time the defendant has refused to enter upon said property and mine same and the defendant has not in any way or in any manner since on or about the first day of September, 1909, done any mining on said property;

That the conditions of the weather and season of the year 1909 made it possible for the defendant to have dredged and mined on the afore-described property up to and until the 20th day of October, 1909;

That through the defendant's failure to work the afore-described claims from rim to rim and through

its failure and refusal to carry out the terms of said contract and to [36] continue mining on said property plaintiff has been damaged in the sum of Twenty Thousand Dollars (\$20,000).

WHEREFORE plaintiff prays judgment against the defendant for the sum of Twenty-two Thousand Six Hundred Eleven and 68/100 Dollars (\$22,611.68), together with interest on the sum of Two Thousand Six Hundred Eleven and 68/100 Dollars (\$2,611.68) from October 1st, 1909, and for costs of suit.

W. S. ANDREWS,
Attorney for Plaintiff.

State of California,
City and County of
San Francisco,—ss.

D. M. Kent, being first duly sworn, deposes and says: That he is the secretary of the Northern Light Mining Company, a corporation, plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief and as to those matters he believes it to be true.

D. M. KENT.

Subscribed and sworn to before me this 27th day of May, 1911.

[Notarial Seal]

W. H. PYBURN,
Notary Public in and for the City and County of San Francisco, State of California. [37]

EXHIBIT "A."

THIS INDENTURE OR LEASE, made this tenth day of May, A. D. 1907, by and between the NORTHERN LIGHT MINING COMPANY, a corporation of San Francisco, California, the lessor and the BLUE GOOSE MINING COMPANY, a corporation of Nome, Alaska, lessee,

WITNESSETH:

That the lessor for and in consideration of the rents, royalties and agreements hereinafter reserved and by the lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee those certain placer mining claims situate in the Council City Recording District, in the District of Alaska known as

Placer Mining Claim #1 below Discovery on Ophir Creek;

Placer Mining Claim #2 below Discovery on Ophir Creek;

Placer Mining Claim #3 below Discovery on Ophir Creek;

Placer Mining Claim #3½ below Discovery on Ophir Creek;

(Sometimes called "The Oceanview.")

The "Richmond Bench," situate easterly of #1 below discovery.

The "Eureka Mine," situate easterly of #2 below discovery.

"Northern Light Bench," situate easterly of #3 below discovery.

All of said claims being on or adjacent to Ophir Creek in the District aforesaid;

Together with the appurtenances and the rights and privileges to prospect and mine the same for gold and other precious minerals and to extract and reduce the same to any commercial value.

TO HAVE AND TO HOLD the afore-described premises unto said lessee for the full term of three years from date hereof, expiring at noon on the tenth day of May, A. D. 1910, unless [38] sooner forfeited through the violation of any covenant hereinafter against the said lessee reserved. And in consideration of said lease the said lessee covenants and agrees with the said lessor as follows, to wit:

To enter upon said mining claims and premises and to work the same mine-fashion with their steam dredger "Alpha," now on said ground, in a manner necessary to good and economical mining, so as to take out the greatest amount of gold and precious minerals possible, with due regard to the safety, development and preservation of said premises as working mines.

To work all the gold-bearing gravel on said claims from rim to rim, wherever it is practical to float said dredger, and,

To do said work as steadily and continuously from date of this lease as the weather and season of the year will permit, and generally, to so conduct their dredging operations as to conform to the laws of the United States and the District of Alaska and the local rules and regulations of miners in said mining district, and to do no act which may in any manner

involve the said lessor or its ownership in said mining property in any liability whatsoever;

To not allow or permit any person or persons, except the said lessee or its agents and workmen to take or hold possession of said premises or any part thereof under any pretense whatsoever;

To not assign this lease or any interest thereunder and to not sublet said premises or any part thereof without [39] the written consent of the said lessor;

To pay and deliver to said lessor as royalty and rent thirty-three and one-third ($33\frac{1}{3}$) per cent of all gold and precious minerals extracted from said premises during any single year until the gross yield during said years shall have amounted to Fifty Thousand (50,000) Dollars, and thereafter during said year to pay and deliver to said lessor as rent and royalty forty (40) per cent of all gold and precious minerals extracted from said premises in excess of said Fifty Thousand (50,000) Dollars, and until the gross yield during said year shall have amounted to Two Hundred Thousand (200,000) Dollars. On all gold and precious minerals extracted during any single year in excess of Two Hundred Thousand (200,000) Dollars the rent and royalty to be paid lessor is fifty (50) per cent. The royalties to be so paid are to be of like assay as those retained by lessee and payment to be made at such time and place as lessor shall direct, allowing said lessor or its agent reasonable notice so that he may be present at each and every clean-up, with the right and privilege of inspecting, examining and handling the same, as well as according to him the right and privilege of in-

specting and examining all work done on said property;

To deliver up to said lessor the premises with the appurtenances in good order and condition (accidents not arising from negligence alone excusing), without demand or further notice on said tenth day of May, A. D. 1910, at noon, or at any time previous upon demand for forfeiture.

Finally upon the violation or failure to perform [40] by said lessee, or any person acting under it, of any covenant hereinbefore reserved, the terms of this lease and all rights and privileges thereunder shall at the option of the lessor expire and said lease and said premises with the appurtenances shall at once become forfeited to said lessor, and the said lessor, or their agent, may thereupon, without demand or notice, enter upon said premises and dispossess all persons occupying the same with or without force and with or without process of law.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED that all leases heretofore existing between the parties hereto, upon any and all of the above-described premises, shall be deemed as canceled and annulled and both parties hereto acknowledged a mutual settlement and accounting to date under said leases and of all matters and things arising therefrom.

It being distinctly understood that a certain settlement of account had at Nome, Alaska, during 1906, affecting the working of said claims by the lessee herein, was, in so far as the settlement for the season of 1906 is concerned, a final settlement and also is

it hereby particularly covenanted and agreed that the lessee waives all damages against lessor for any *user* whatsoever heretofore by the lessor had of a certain steam shovel owned by lessee.

Each and every clause and covenant of this indenture extends to the successors or all parties hereto and to the assigns of said lessor and as said lessor may elect to the assigns of said lessee.

IN WITNESS WHEREOF, the said parties, lessor and [41] lessee, have hereunto set their corporate name and affixed their seals by *by* their officers and agents thereunto, by resolution duly authorized.

NORTHERN LIGHT MINING
COMPANY, [Seal]

Lessor.

PHILIP T. BENNETT, [Seal]
President.

D. M. KENT [Seal]

[Seal of the Northern Secretary.
Light Mining Company.]

BLUE GOOSE MINING COM-
PANY, [Seal]

Lessee.

By GORDON HALL, [Seal]
Attorney in Fact.

Witnesses:

G. H. KELLOGG.

FRANK L. OWEN.

State of California,

City and County of San Francisco,—ss.

On this 16th day of May, in the year one thousand nine hundred and seven (1907), before me, Ben. F. Rector, a notary public, in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Philip T. Bennett and D. M. Kent, known to me to be the president and secretary, respectively, of the corporation that executed the within instrument and duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and [42] County of San Francisco, the day and year in this certificate first above written.

[Notarial Seal]

BEN F. RECTOR,

Notary Public in and for the City and County of
San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

On this 18th day of May, in the year of our Lord one thousand nine hundred and seven, before me, Frank L. Owen, a notary public, in and for said city and county and State, residing therein, duly commissioned and sworn, personally appeared Gordon Hall, known to me to be the person whose name is subscribed to the within instrument, as the Attorney in Fact of Blue Goose Mining Company, and acknowledged to me that he subscribed the name of Blue Goose Mining Company thereto as principal, and his own name as attorney in fact.

In Witness Whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county and State aforesaid the day and year in this certificate first above written.

[Notarial Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of
San Francisco, State of California. [43]

Assigned to Department No. 8. Jun. 3, 1911.

E. P. MOGAN,

Presiding Judge.

[Endorsed on Back]: In the Superior Court of the State of California, in and for the City and County of San Francisco. 36,081. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Complaint. Damages. Indexed. Filed June 2, 1911. H. I. Mulcrevy, Clerk. By L. J. Welch, Deputy Clerk.

*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant. [44]

**Plaintiff's Amendment to Second Count of
Complaint.**

Now comes the above-named plaintiff and files this its amendment to plaintiff's complaint on file herein and in place and stead of the second count in said complaint substitutes the following count:

“I.

Plaintiff hereby refers to paragraphs I, II, III, IV, and V of its first cause of action in the complaint on file and makes the allegations set forth in said paragraphs an integral part of this count;

II.

That thereafter, upon the execution and delivery of said lease——, the defendant entered upon the afore-described premises and commenced mining thereon and continued mining on said premises until on or about the 12th day of August, 1909; that at that time the defendant, without the consent of the plaintiff, commenced to remove its dredger, known as the “Alpha,” from said premises and discontinued dredging and mining thereon with the exception of five days between the 12th of August, 1909, and the first day of September, 1909;

That on the first day of September, 1909, the plaintiff moved its dredger off the afore-described premises without the consent of the plaintiff and that from said time the defendant has refused to enter upon said property and mine the same, and that the de-

W. H. P.
N. P.

W.*H.P. fendant has not in any way or in any
N.P. manner, since on or about the 12th day
 of August, 1909, except as aforesaid, done
 any mining on said property. [45]

That through the defendant's refusal to carry out the terms of said contract and to continue mining on said property the plaintiff has been damaged in the sum of Twenty Thousand Dollars (\$20,000.).

WHEREFORE, plaintiff prays judgment against the defendant for the sum of Twenty-two Thousand Six Hundred Eleven Dollars and Sixty-eight W. H. P. Cents (\$22,611.68), together with interest N. P. thereon from August 12th, 1909, and for costs of suit.

W. S. ANDREWS,
Attorney for Plaintiff.

State of California,
City and County of San Francisco,—ss.

D. M. Kent, being first duly sworn, deposes and says: That he is the secretary of the Northern Light Mining Company, a corporation, plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

D. M. KENT,

Subscribed and sworn to before me, this 27th day of January, 1912.

[Notarial Seal] W. H. PYBURN,
Notary Public in and for the City and County of
San Francisco, State of California. [46]

IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing Amended Complaint may be filed as though leave of Court had first been obtained.

FINK & WHITE.

W. S. ANDREWS.

Due service and receipt of a copy of the within amended complaint is hereby admitted this 26th day of January, 1912.

FINK & WHITE,

Attorneys for Defendant.

No. 36,081. Dept. No. 8.

[Endorsed]: Filed Jan. 29, 1912. H. I. Mulcrevy, Clerk. By Wm. J. Egan, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a Corporation.

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

**Plaintiff's Second Amendment to Second Count of
Amended Complaint.**

Now comes the above-named plaintiff, and with leave [47] of Court first *hand* and obtained, files this its Second Amendment to plaintiff's Amended Complaint on file herein, and in place of the second count in said complaint, substitutes the following count:

I.

Plaintiff hereby refers to Paragraphs I, II, III, IV and V of its first cause of action in the complaint on file herein, and makes the allegations set forth in said paragraph an integral part of this count.

II.

That thereafter, upon the execution and delivery of said lease, the defendant entered upon the afore-described premises and commenced mining thereon under and pursuant to the terms of the aforesaid lease, and continued mining on said premises under said lease until on or about the 12th day of August, 1909; that at that time, the defendant without the consent of plaintiff, commenced to remove its dredger, known as the "Alpha," from off said premises, and discontinued dredging and mining thereon, with the exception of a period of five days between the 12th day of August, 1909, and the first day of September, 1909; that on the 1st day of September, 1909, the plaintiff moved its dredger off the afore-described premises without the consent of the plaintiff, and that from said time the defendant has refused to enter upon said property and mine the same, and that the defendant has not in any way, or in any manner since on or about the 12th day of August, 1909, except as aforesaid, done any mining on said property. [48]

III.

That at the time defendant commenced to move its dredger off said premises on the 12th day of August, 1909, and also on the 1st day of September, 1909, there still remained 434,886 cubic yards of gold-bear-

ing gravel and ground which had not yet been worked, and was still virgin ground, and which was included in the premises leased by the plaintiff to the defendant as aforesaid;

That water was available to float the dredger to work this ground; that the formation of the bedrock of said remaining ground was such that the dredger could work it, and that, in short, it was practical to float the dredger on this remaining ground and to work it from rim to rim.

IV.

That between the 12th day of August, 1909, and the last day of the working season of the year 1909, the defendant would, if it had fully performed its agreement set out, have mined and dredged an amount of gold of the value of \$52,260.

That at the time the defendant moved its dredger off the premises on September 1st, 1909, the defendant had taken out during that season \$62,084.64;

That under the terms of the lease the defendant agreed to pay the plaintiff forty (40%) per cent of the gross amount of gold taken out of the ground, when that amount exceeded during any one year \$50,000, and did not exceed \$200,000; that the plaintiff would have received the sum of \$20,904 from the defendant if the defendant had fully executed and performed its agreement, and had mined the aforesaid premises for the full season of 1909. [49]

V.

That during the term of the aforesaid lease, and up to August 12th, 1909, the defendant did not work, and dredge the premises leased, from rim to rim, but .

picked out the rich paying gravel and worked the same, avoiding the lower grade ground.

That on August 12th, 1909, when the defendant had dredged the high-grade ground, it thereupon without the consent of plaintiff, abandoned the premises.

VI.

That since the defendant abandoned the afore-described premises on August 12th, 1909, the plaintiff has endeavored continuously ever since that date, to the best of its ability to secure some one else to work said property, but has not been able to do so;

That the greatest royalty that the plaintiff could have obtained from any one, either on the 12th day of August, 1909, or on the 1st day of September, 1909, or at any time since August 12th, 1909, to the present time, was and is 10% of the gross amount of gold extracted from the premises, and this percentage was at said dates, and is now the market rental value of said premises, expressed in terms of royalty paid on the gross amount of gold taken out; that the greatest royalty that the plaintiff can possibly obtain in the future from any one for working said premises is 10% of the gross amount of gold extracted. In other words, the greatest royalty which the plaintiff could have obtained on August 12th, 1909, or on the 1st day of September, 1909, or at any [50] time since then, and indeed the greatest royalty which the plaintiff can obtain in the future from any one for working with a dredge the same ground, and the same area of ground which the defendant

would have worked if it had fully performed its agreement, and had worked the entire season of 1909, is \$5226.

That since September 1st, 1909, no gold at all has been taken out of said property leased to defendant, as aforesaid.

VII.

That the aforesaid remaining virgin ground cannot be worked by any method than by a dredger, at a profit to plaintiff greater than 10% of the gross amount of gold that can be extracted. That the plaintiff does not own a dredger and it would be impossible for it to install a suitable and adequate dredger on the afore-described premises and work the same at any profit.

VIII.

That through the act of the defendant in vacating and abandoning the premises above described and breaking its lease, the plaintiff has been damaged as follows:

To the amount of \$15,678, which is the difference between \$5226, the best royalty obtainable by the plaintiff, as aforesaid, from any one else to work said property, and \$20,904, the royalty which plaintiff would have received if defendant had fully performed its agreement;

Interest on the sum of \$52,260 at the rate of 7% per annum, from September 1st, 1909. [51]

WHEREFORE, plaintiff prays judgment against defendant for the sum of Fifteen Thousand Six Hundred and Seventy-eight (\$15,678) Dollars, together with interest on the sum of Fifty-two Thousand Two

Hundred and Sixty (\$53,260) Dollars, at the rate of Seven (7%) per annum, from September 1st, 1909, and also for Twenty-Six Hundred and Eleven and 68/100 (\$2611.68) Dollars, with interest thereon at the rate of seven (7%) per annum from August 12th, 1909, and costs of suit, and for such other and further relief as may be meet in the premises.

W. S. ANDREWS,

A. H. BRANDT,

Attorneys for Plaintiff.

State of California,

City and County of San Francisco,—ss.

P. T. Bennett, being duly sworn, deposes and says: He is an officer of the Northern Light Mining Company, to wit, the president; that he has read the foregoing Amended Complaint and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on information or belief, and as to those matters he believes it to be true.

P. T. BENNETT.

Subscribed and sworn to before me this 31st day of January, 1912. [52]

[Seal of the Superior Court]

JOHN F. MOONEY,

Deputy County Clerk and Ex-officio Deputy Clerk
of the Superior Court in and for the City and
County of San Francisco, State of California.

No. 36,081. Dept. No. 8.

[Endorsed]: Filed in Open Court. January 31, 1912. H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy Clerk.

*In the Superior Court of the City and County of
San Francisco, State of California.*

No. 36,081.

Dept. No. 8.

NORTHERN LIGHT MINING COMPANY, a Cor-
poration,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Demurrer to Amended Answer.

Now comes the plaintiff and—

1. Demurs to the amended answer filed by the [53] defendant herein on the ground that said amended answer does not state facts sufficient to constitute a defense to said action.

2. Demurs to the first separate defense to the first cause of action set out in said complaint on the ground that the allegations thereof are not sufficient to constitute a legal defense to said first cause of action.

3. Demurs to the second separate defense to the first cause of action set out in said complaint on the ground that the allegations of said second separate answer do not constitute a legal defense to the first cause of action.

4. Demurs to the separate defense to the second cause of action set out in said complaint on the

ground that the allegations thereof do not constitute a legal defense to said second count.

W. S. ANDREWS,
Attorney for Plaintiff.

I hereby certify that the foregoing demurrer is in my opinion sound in law.

W. S. ANDREWS.

[Endorsed]: Filed in open court January 31, 1912.
H. I. Mulerevy, Clerk. By John F. Mooney. Deputy
Clerk. [54]

*In the Superior Court of the City and County of San
Francisco, State of California.*

No. 36,081.

Dept. No. 8.

NORTHERN LIGHT MINING COMPANY, a Cor-
poration,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Motion to Strike Out.

Now comes the plaintiff in the above-entitled action and moves the Court for an order striking out the following portions of the amended answer filed by the defendant herein, to wit:

1. The whole of the first alleged separate defense to the first count of the complaint filed herein.

2. The whole of the second alleged separate defense to the first count of the complaint filed herein.

3. The whole of the alleged separate defense to the second count of the complaint herein.

This motion is made on the ground that the allegations contained in said defenses and each of them, are immaterial and irrelevant and do not constitute a legal [55] defense to this action.

W. S. ANDREWS,
Attorney for Plaintiff.

[Endorsed]: Filed in Open Court, January 31, 1912.
H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy
Clerk.

*In the Superior Court of the City and County of San
Francisco, State of California.*

No. 36,081.

Dept. No. 8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

**Motion for Judgment on the First Count on the
Pleadings.**

Now comes the plaintiff in the above-entitled ac-
tion and moves the Court for judgment on the first
cause of action set out in the complaint on the plead-
ings.

This motion is made on the ground that the material allegations of said first cause of action as set out in the complaint herein are admitted by the amended answer of the [56] defendant, and that the first and second separate defenses alleged by defendant to said first cause of action do not constitute legal defense to said first cause of action.

W. S. ANDREWS,
Attorney for Plaintiff.

[Endorsed]: Filed in Open Court, January 31, 1912.
H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 36,081.

Dept. #8.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Answer to Amended Complaint.

Comes now the defendant above named, and for answer to the Amended Complaint of plaintiff filed herein, states: [57]

I.

That it admits the allegations contained in paragraph I of the first cause of action of said Amended Complaint.

II.

Answering paragraph II of the said first cause of action, admits that it is, and at all times mentioned in said Amended Complaint was, a corporation organized and existing under and by virtue of the laws of the District of Alaska but denies that it is now doing, conducting or carrying on business in the State of California, or at any time mentioned in said Amended Complaint, or at any other time has carried on, conducted or done business in the State of California.

III.

Answering paragraph II of said first cause of action, admits the allegations contained in said paragraph.

IV.

Answering paragraph IV of said first cause of action admits the allegations contained in said paragraph.

V.

Answering paragraph V of said first cause of action admits the allegations contained in said paragraph, except that allegation therein contained to the effect that defendant agreed in said lease to work and mine the said premises described in the Amended Complaint during the full term of said lease, and this allegation defendant denies.

VI.

Answering paragraph VI of said first cause of action [58] defendant denies that plaintiff was entitled under its said contract, or otherwise, to the sum of \$21,500.51, or any other sum in excess of

\$18,888.83, which said sum last aforesaid defendant alleges was paid to plaintiff and by plaintiff accepted, and denies that there is now due, owing or unpaid to plaintiff from defendant the sum of \$2611.68, or any other sum or sums whatever.

For a first, further and separate defense to the first cause of action of plaintiff, defendant alleges:

I.

That the defendant herein, on or about the 13th day of August, 1909, notified plaintiff that it proposed to move its said steam dredger "Alpha" off the placer mining claims named in plaintiff's Amended Complaint, and to cease mining thereon.

That after defendant had notified plaintiff of its intention to remove its dredger from said premises, and while defendant was actually engaged in the moving of its said dredger off the said placer mining claims, plaintiff, through its agent thereunto duly authorized, employed defendant to work out and extract the gold and gold-dust from certain small pieces or blocks of unworked ground which had been left unworked by plaintiff in its theretofore mining operations upon said placer claims, and which were covered with tailings and tailing [59] piles; and in this connection plaintiff agreed to pay and deliver to defendant as compensation for working and mining out said small pieces or blocks of unworked ground, eighty (80%) per cent of the gross product of gold derived therefrom.

III.

That defendant accepted said employment offered by plaintiff, and thereupon proceeded and did work

out said pieces or blocks of unworked ground, and extracted gold and gold-dust therefrom of the gross value of about \$13,545.36, and delivered said gross product to plaintiff, and out of said gross product plaintiff paid and delivered to defendant eighty (80%) per cent of the value thereof, in accordance with and in pursuance of the said contract of employment entered into between plaintiff and defendant in this behalf; and thereupon said employment with reference to the work upon said small pieces or blocks of unworked ground was fully executed and terminated.

For a second further and affirmative defense to the first cause of action of plaintiff, defendant alleges:

I.

That by an old well-established, well-known and universal custom and usage of and among miners throughout the District of Alaska, in all cases in which one leases to another mining ground with the right and privilege of extracting therefrom gold and gold-dust upon a royalty basis, [60] if nothing is contained in the leasing contract evidencing with certainty an intention upon the part of the parties to the lease that the lessee shall continue to operate and mine the premises for the full term for which the lease is given, a lessee is not and cannot be required to remain upon and continue to operate and mine the ground so leased during the whole of term fixed in the lease, but it is at all times the right and privilege of such lessee to leave and quit the premises leased and to cease operating and min-

ing thereon at any time such lessee sees fit so to do; and the said contract of lease sued upon in this action was entered into by the respective parties thereto with reference to and in accordance with the recognition of said custom and usage.

And for answer to the separate and second cause of action in plaintiff's Amended Complaint filed herein, defendant

I.

Refers to the statements contained in paragraphs I, II, III, IV and V of this Answer, to the first cause of action of said Complaint, and makes the same a part hereof, as though fully set forth at length herein.

II.

Denies that plaintiff has been damaged in the sum of Twenty Thousand (\$20,000) Dollars, or any other sum whatsoever, for failure or default of defendant to work the afore-described claims, or to carry out the terms of said contract, [61] or to continue mining on said property, or by reason of any other act or default of defendant, or its agents, and defendant alleges that it has in all respects complied with the terms, conditions and requirements of the said contract and lease, to be by it kept, performed and complied with.

For a second and further and separate defense to the second cause of action of plaintiff's Amended Complaint, defendant alleges:

I.

That by an old, well established, well known and universal custom and usage of and among miners

throughout the District of Alaska in all cases in which one leases to another mining ground with the right and privilege of extracting therefrom gold and gold-dust upon a royalty basis, if nothing is contained in the leasing contract evidencing with certainty an intention upon the part of the parties to the *lease*, that the lease shall continue to operate and mine the premises for the full term for which the lease is given, a lessee is not and cannot be required to remain upon and continue to operate and mine the ground so leased during the whole of the term fixed in the lease, but it is at all times the right and privilege of such lessee to leave and quit the premises leased and to cease operating and mining thereon at any time such lessee sees fit so to do; and the said contract [62] of lease sued upon in this action was entered into by the respective parties thereto with reference to, in accordance with, and recognition of said custom and usage.

WHEREFORE, defendant prays to go hence with its costs herein expended.

FINK and WHITE,
Attorneys for Deft.

WM. M. C.
D. C. C.

State of California,
City and County of San Francisco,—ss.

Jafet Lindeberg being first duly sworn, deposes and says: That he is the president of the Blue Goose Mining Company, a corporation, defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that

the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me, this 29th day of January, 1912.

JAFET LINDEBERG,

[Notarial Seal]

FLORA HALL,

Notary Public in and for the City and County of
San Francisco, State of California.

San Francisco, Calif., January, 1912. [63]

IT IS HEREBY STIPULATED AND
AGREED between the parties to the within entitled
action, that the foregoing Amended Answer may be
filed by the defendant within named, and as though
leave of Court therefor had been first had and ob-
tained.

W. S. ANDREWS,

Attorneys for Plaintiff,

FINK & WHITE,

Attorneys for Defendant.

[Endorsed]: Filed in open court, January 30,
1912. H. I. Mulcrevy, Clerk. By John F. Mooney,
Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 36,081.

Dept. #8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Answer.

Comes now the defendant, and for answer to plaintiff's [64] Second Amendment to its second count of its Amended Complaint.

I.

Refers to the statements contained in paragraphs I, II, III, IV and V of its Answer to the first cause of action of said Complaint, and makes the same a part hereof, as though fully set forth at length herein.

II.

Admits the allegations contained in paragraph #II of plaintiff's second amendment to its second count of its Amended Complaint, except the allegation therein contained to the effect that the mining done by defendant for a period of five days, between the 12th day of August and the 1st day of September was done under or pursuant to said lease, which allegation defendant denies.

III.

Alleges that it has no information or belief sufficient to enable it to answer the allegation that the formation of the bed-rock of said remaining ground was such that the said dredger *could* work out, and that it was practical to float said dredger on this remaining ground, and to work it from rim to rim, and therefore denies that the formation of the bed-rock of said remaining ground was such that said dredger could work it, or that it was practical to float the said dredger on said remaining ground, or

W. M. Mc
D. C. C. to work it from rim to rim, or otherwise.

IV.

Denies that defendant fully or otherwise failed to [65] perform its said agreement, and alleges that it has no information or belief sufficient

Wm. M. C.
D. C. C. to enable it to answer the allegation as to the amount of gold defendant would have mined and dredged between the 12th day of August, 1909, and the last day of the working season of the year 1909, if it had continued to mine and dredge upon said premises, and therefore denies that it would have extracted, mined or dredged an amount of gold of the value of \$52,260, or of any other sum or value whatever, and denies that it has taken out during the season of 1909, prior to September 1st, 1909, \$62,084.64, or any other sum whatever, but admits that it had during the said time taken out and extracted gold of the value of said sum, but denies that said gold so extracted was extracted under and by virtue of the terms of said lease, other than gold of the value of \$48,539.28, and alleges that it

has no information or belief sufficient to enable it to answer the allegation that plaintiff would have received the sum of \$20,904, from the defendant if the defendant had mined the afore-described premises for the full season of 1909, and therefore denies that plaintiff would have received the sum of \$2094, or any other sum whatever from defendant.

V.

Denies that during the term of the aforesaid lease or at any other time, and up to the 12th day of August, 1909, or at any other time, defendant did not work or dredge the premises leased from rim to rim, and denies that defendant picked out the rich paying gravel, or worked the same, and denies that defendant avoided the low grade ground, but on [66] the contrary alleges that at all times during which defendant operated upon said premises, prior to the 12th day of August, 1909, it did work said premises clean from rim to rim in a miner-like manner and in accordance with the terms of its said contract.

VI.

Alleges that it has no information or belief sufficient to enable it to answer the allegation that since the defendant abandoned the afore-described premises on August 12th, 1909, the plaintiff has endeavored continuously ever since that date to the best of its ability to secure someone else to work said property, but has not been able to do so, and therefore denies that plaintiff has since the 12th day of August, 1909, or at all, endeavored to the best of its ability or at all, to secure someone else

Wm. Mc
D. C. C.

to work said property; and denies that plaintiff has not been able to secure someone else to work said property; and alleges that it has no information or belief sufficient to enable it to answer the allegation that the greatest royalty that plaintiff could have obtained from anyone either on the 12th day of August, 1909, or on the 1st day of September, 1909, to the present time, was and is 10% of the gross amount of gold extracted from the premises, and therefore denies that the greatest royalty that plaintiff could have obtained from anyone, either on the 12th day of August, 1909, or on the 1st day of September, 1909, or at any time since August 12th, 1909, to the present time, is or was 10% of the gross amount of gold [67] extracted from the premises; and alleges that it has no information or belief sufficient to enable it to answer the allegation that 10% was at said times, and is now the marked rental value of said premises, expressed in terms of royalty paid on the gross amount of gold taken out and therefore denies that 10% was at said dates, or is now the market rental value of said premises, expressed in terms of royalty, or otherwise paid on the gross amount of gold taken out, and alleges that it has no information or belief sufficient to enable it to answer the allegation that the greatest royalty that plaintiff can possibly obtain in the future from anyone for working said premises is 10% of the gross amount of gold extracted, and therefore denies that the greatest or other royalty that plaintiff can possibly or otherwise obtain in the future from any-

one for working said premises is 10% of the gross amount of gold extracted, and alleges that it has no information or belief sufficient to enable to answer the allegation that in other words the greatest royalty which the plaintiff could have obtained on August 12th, 1909, or on the 1st day of September, 1909, or at any time since then, and indeed the greatest royalty which plaintiff can obtain in the future from anyone for working with a dredge the same ground and the same area of ground which the defendant would have worked if it had fully performed its agreement, and had worked the entire season of 1909, is \$5,226, and therefore denies that in other words, or otherwise the greatest or other royalty which plaintiff could have obtained on August 12th, 1909, or on the 1st day of September, 1909, or at any time since then, [68] or in the future from anyone working with a dredge or otherwise, the same ground, or the same area of ground which the defendant would have worked if it had continued to operate thereon, and had worked the entire season of 1909, is \$5,226, or any other sum, and denies that it in any way failed to fully or otherwise perform its agreement.

VII.

Denies that the remaining virgin ground cannot be worked by any other method than a dredger, and denies that it cannot be worked at a profit to plaintiff greater than 10% of the gross amount of gold that can be extracted; and denies that it would be impossible to install a suitable and adequate dredger on the premises, and denies that it would be impossi-

ble to work the said premises at a profit.

VIII.

Denies that defendant has broken its said lease, and denies that plaintiff has been damaged by defendant in the sum of \$15,678, or in any other sum or sums whatever, and denies that \$5226 is the best royalty obtainable by plaintiff from any one else to work said property; and alleges that it has in all respects complied with the terms, conditions and requirements of the said contract and lease to be by it kept, performed and complied with.

For a second further affirmative and separate [69] defense to plaintiff's second amendment to its second count of its Amended Complaint, defendant alleges:

I.

That by an old, well established, well known and universal custom and usage of and among miners throughout the District of Alaska in all cases in which one leases to another mining ground with the right and privilege of extracting therefrom gold and gold-dust upon a royalty basis, if nothing is contained in the leasing contract evidencing with certainty an intention upon the part of the parties to the lease, that the lessee shall continue to operate and mine the premises for the full term for which the lease is given, a lessee is not and cannot be required to remain upon and continue to operate and mine the ground so leased during the whole of the term fixed in the lease, but it is at all times the right and privilege of such lessee to leave and quit the premises leased and to cease operating and mining

thereon at any time such lessee sees fit so to do; and the said contract of lease sued upon in this action was entered into by the respective parties thereto with reference to, in accordance with, and recognition of said custom and usage.

II.

That during the years 1905, and 1906, defendant had been operating its steam dredge "Alpha" upon certain mining claims belonging to plaintiff, lying south of and adjoining Number 2 Below, and the Eureka Bench on Ophir Creek, under a contract with plaintiff, similar in its terms and conditions to that executed on the 10th day of May, 1907, and set forth in plaintiff's [70] Complaint herein.

III.

That the gravels contained in and upon said mining claims upon which defendant had been operating during said years of 1905 and 1906, as hereinbefore set forth, were of the average value of not to exceed 60¢ per cubic yard.

IV.

That plaintiff and defendant had found and discovered from the actual operation of said steam dredge "Alpha" during said years 1905 and 1906, that said gravels could not be mined and washed by said dredge "Alpha" at a reasonable profit to plaintiff and defendant.

V.

That in order to place said dredge "Alpha" upon gravels which were believed to contain higher and greater values than those contained within and upon the mining claims theretofore operated as hereinbe-

fore set forth, the contract theretofore existing between plaintiff and defendant was by mutual consent abandoned prior to the expiration of its terms, and that of May 10th, 1907, executed in lieu thereof.

VI.

That the largest individual stockholders of plaintiff were also the largest individual stockholders of defendant and the president and superintendent of plaintiff was a director of defendant, and the general agent and attorney in fact of plaintiff was also the general agent and attorney in fact and managing director of defendant, and as such attorney in fact [71] of defendant signed its name to, and in its behalf, executed the contract of May 10, 1907, for the uses and purposes herein set forth.

VII.

That prior to May 10, 1907, defendant had never prospected upon, or made any estimate of values contained in the mining claims of plaintiff lying north of Number 3 Below Discovery on Ophir Creek, and had no knowledge or belief as to the values therein contained other than a belief based wholly upon the knowledge and representations of the agents, officers and directors of plaintiff.

VIII.

That the subject matter of said contract of May 10, 1907, was the gravels contained upon and within the mining claims of plaintiff lying north of Number 3 Below Discovery on Ophir Creek, and believed by plaintiff and defendant, and represented by plaintiff and defendant, to contain greater and higher values than those existing upon the lower claims

upon which defendant had theretofore been engaged in operating, as hereinbefore set forth.

IX.

That the purpose of the contract of May 10, 1907, set forth in plaintiff's complaint was to secure the removal of said steam dredger "Alpha" from mining claims where it had been found and discovered that said dredger could not be operated at a reasonable mutual profit by reason of the lack of values in the gravels therein contained to the mining claims [72] higher up Ophir Creek, where it was believed that gravels of greater and higher values were contained.

X.

That in its operation upon the mining claims of plaintiff up to the 12th day of August, 1909, defendant mined and operated at the precise and exact *sppts* and in the manner it was directed so to do by the Superintendent and President of defendant, and its agent and attorney in fact, and in the conduct of said mining operations worked all of said gravels clean up to and including all portions of the rim where it was practical to float said dredger.

XI.

That at the time of the execution of said contract of May 10th, 1907, it was well known to plaintiff and defendant that the utmost capacity of said dredge did not and could not exceed 100,000 cubic yards per annum, said knowledge being based upon the actual operation of said dredge during the season of 1905 and 1906.

XII.

That defendant ceased operations upon said mining claims of plaintiff, because it had mined, operated and mashed all the gold-bearing gravels therein contained, which defendant could mine or wash at a reasonable or any profit to itself.

XIII.

That the gravels contained in and upon the mining claims of plaintiff left unmined and unwashed by defendant can by the expenditure of a reasonable sum of money by plaintiff [73] be mined and operated by plaintiff at a cost to plaintiff of not to exceed 12 $\frac{1}{2}$ ¢ per cubic yard, and that from such mining and operating plaintiffs can and will receive a larger and greater profit than it could or would have received from any royalty or royalties paid by defendant to plaintiff under said contract of May 10, 1907, had defendant continued to mine and operate thereunder.

WHEREFORE, defendant prays that plaintiff take nothing by its complaint herein, and that defendant be hence dismissed with costs.

FINK & WHITE,
Attorneys for Defendant.

State of California,

City and County of San Francisco,—ss.

Jafet Lindeberg being first duly sworn, deposes and says: That he is the president of the Blue Goose Mining Company, a corporation, defendant in the above-entitled action; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information

or belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me, this 13th day of February, 1912.

JAFET LINDEBERG.

[Notarial Seal] FLORA HALL,
Notary Public in and for the City and County of
San Francisco, State of California. [74]

[Endorsed on Back]: Receipt of copy hereof admitted Feb. 13, 1912.

W. S. ANDREWS,
A. H. BRANDT,
Attorneys for Plaintiff.

No. 36,081. Dept. 8 in the Superior Court of the State of California in and for the City and County of San Francisco. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Answer. Filed in Open Court February 13, 1912. H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy Clerk. [75]

*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

No. 36,081.

Dept. 8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Crpora-
tion,

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on January 30th, 1912, in the above-entitled court, a jury trial having been expressly waived by a written stipulation between the parties herein. W. S. Andrews, Esq., and A. H. Brandt, Esq., appeared as counsel for the plaintiff and Messrs. Fink & White appeared on behalf of the defendant. It appearing to the Court that the defendant had been regularly served with a copy of the summons and complaint in said cause, in the City and County of San Francisco, State of California, and that the defendant had duly appeared, by filing a demurrer and answer in said action and had not objected to the jurisdiction of said court, the Court proceeded to hear said cause. Whereupon the plaintiff moved the Court for judgment on the pleadings on the first cause [76] of action contained in the complaint on file herein and

the first amended answer thereto. After due consideration the Court granted said motion and ordered judgment to be entered on said first cause of action as prayed for in the complaint. Thereupon the parties proceeded to trial on the second cause of action and the Court having heard the evidence of the respective parties and considered the same, and the cause having been submitted, after argument, to the Court for its decision, the Court now finds the following facts on the said second cause of action:

I.

That the plaintiff is and was at all times involved herein, a corporation organized and existing under and by virtue of the laws of the State of California.

II.

That the defendant is, and at all times involved herein, was a corporation organized and existing under and by virtue of the laws of the District of Alaska.

III.

That on the 10th day of May, 1907, in the City and County of San Francisco, State of California, the plaintiff and defendant entered into and executed a written agreement or lease, a copy of which is attached to the original complaint on file herein, and marked exhibit "A."

IV.

That after the execution and delivery of said lease, [77] the defendant entered upon the premises described in said lease and in said complaint, and commenced mining thereon, under and in pursuance of the terms of the aforesaid agreement or lease, with

its dredger known as the "Alpha," and continued mining on said premises during the mining seasons of 1907 and 1908; that on May 20th, 1909, the defendant again commenced mining the said premises, with its dredger known as the "Alpha," and continued so mining under the terms of said agreement or lease, until the 12th day of August, 1909; that on that date without the consent of the plaintiff, the defendant commenced to move its dredger known as the "Alpha" off said premises, and thereafter discontinued dredging and mining the premises described in said agreement or lease, with the exception of a period of five (5) days between the 12th day of August, 1909, and the 1st day of September, 1909, during which period it worked under said agreement or lease; that on the 1st day of September, 1909, the defendant moved its dredger off the premises described in said agreement or lease, without the consent of the plaintiff, and that from said time, the defendant has refused to enter upon said property, and mine the same, and that the defendant has not in any way or in any manner, since the 12th day of August, 1909, except as aforesaid, done any mining on said property.

V.

That at the time the defendant commenced to remove its dredger off said premises, on the 12th day of August, 1909, and also on the 1st day of September, 1909, there still remained [78] over seventy thousand (70,000) cubic yards of gold-bearing gravel and ground, which had not yet been worked and was still virgin ground and which was included in the

premises leased by the defendant from the plaintiff as aforesaid; that water was available to float the dredger known as the "Alpha" to work this ground; that the formation of the bed-rock and the character of said ground was such that the dredger could work it, and that in short it was practical to float the dredger on this remaining ground and to work it from rim to rim.

IV.

That the last day of the working season for the year 1909, was October 24th, and that there remained after August 12th, 1909, sixty-seven (67) working days during which the defendant could have mined the premises leased, if it had continued operations.

VII.

That the capacity of the dredger known as the "Alpha" was and is one thousand (1,000) cubic yards per day of twenty-four (24) hours, and that it was possible and was the custom to work twenty-four (24) hours a day in mining on this property.

VIII.

That the value of the gold-bearing gravel and ground remaining unworked after August 12th, 1909, and September 1st, 1909, and which could have been mined by the defendant if it had continued dredging, is fifty (50) cents a cubic yard. [79]

IX.

That during the period that the defendant mined in the season of 1909, it extracted under said agreement or lease, from the premises, gold of a value greater than Fifty Thousand dollars (\$50,000).

X.

That during the term of the aforesaid agreement or lease and up to August 12th, 1909, the defendant did not work and dredge the premises leased from rim to rim, but mined the high-grade gravel and avoided the low-grade ground; that on August 12th, 1909, when the defendant had mined the high-grade ground, it thereupon without the consent of plaintiff, abandoned the premises and refused to continue mining.

XI.

That since the defendant abandoned the premises on August 12th, 1909, the plaintiff has endeavored continuously, to the best of its ability, to secure some one else to work said property, but without success; that the greatest royalty that the plaintiff could have obtained from anyone for working the ground remaining, with a dredger or by any other method, either on August 12th, 1909, or September 1st, 1909, or at any time since August 12th, 1909, till the present time is fifteen per cent (15%) of the gross amount of gold extracted from the premises; that fifteen per cent (15%) was on August 12th, 1909, and ever since *the*, has been the market and reasonable rental value of the mining claims remaining unworked, described in said agreement or lease, expressed in terms of royalty paid on the gross amount of the gold taken out; that the greatest [80] royalty that the plaintiff possibly can obtain in the future by working said remaining ground is fifteen per cent (15%) of the gross amount of gold extracted.

XII.

That the aforesaid remaining ground cannot be worked with a dredger or by any other method by plaintiff at a profit greater than fifteen per cent (15%) of the gross amount of gold that can be extracted; that the plaintiff does not own a dredger and that it would be impossible for it to install a suitable and adequate dredger on the aforesaid described premises and work the same at any profit. That it is not true that the gravel contained in and upon the mining claims of plaintiff left unmined and unwashed by defendant can by the expenditure of a reasonable sum of money by plaintiff, be mined and operated by plaintiff at a cost to plaintiff of not to exceed twelve and one-half cents per cubic yard. That it is not true that from such mining and operating plaintiff can and will receive a larger and greater profit than it could or would have received from any royalty or royalties paid by defendant to plaintiff under said contract of May 10th, 1907, had defendant continued to mine and operate thereunder.

XIII.

That if the defendant had fully performed its agreement and had mined the premises leased, for the remainder of the season of 1909, it would have extracted gold in the value of Thirty-three Thousand Five Hundred Dollars (\$33,500), of which the plaintiff would have been entitled to forty per cent [81] (40%). That through the failure of the defendant to perform its agreement, the plaintiff has been damaged in the amount of twenty-five per cent

(25%) of said Thirty-three Thousand Five Hundred Dollars (\$33,500) or Eight Thousand Three Hundred and Seventy-five Dollars (\$8375).

XIV.

That since August 12th, 1909, the said premises have not been mined and no gold has been taken out of the same, except the gold that was taken out by the defendant during the five (5) days that it worked between August 12th, 1909 and September 1st, 1909.

XV.

That during the time that the defendant operated under said agreement or lease, up to August 12th, 1909, it netted great profit to itself through said operations and that if the defendant had continued operating during the remainder of the season of 1909, and had carried out its contract it would have made a reasonable profit by so doing.

AS CONCLUSIONS OF LAW FROM THE
Wm. M. C. FOREGOING FACTS, THE COURT
D. C. C. HEREBY FINDS AND DECIDES:

That the plaintiff is entitled to judgment on the second count of its complaint in the sum of Eight Thousand Three Hundred and seventy-five Dollars (\$8,375), together with interest thereon at
Wm. M. C. the rate of seven per cent (7%) per annum
D. C. C. from the date of filing the complaint herein, namely, [82] June 2, 1911, together with costs of suit, and judgment is hereby ordered to be entered accordingly.

GEO. A. STURTEVANT,
Judge.

Dated March 22d, 1912.

[Endorsed]: Filed Mar. 26, 1912. H. I. Mulcrevy, Clerk. By W. J. Egan, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 36,081.

Dep. 8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Judgment.

D. 3/26/12. 15. C. H.—P. M.

This cause of action came on regularly for trial on [83] the 30th day of January, 1912, W. S. Andrews, Esq., and A. H. Brant, Esq., appearing as counsel for the plaintiff and Messrs. Fink & White, appearing as counsel for the defendant and trial by jury having expressly waived in writing by the counsel for the respective parties, the cause was tried before the court, sitting without a jury. Whereupon a number of witnesses were examined on the part of plaintiff and on the part of the defendant and the evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court delivers its findings and decision in writing, which is filed, and orders that judgment be entered as follows:

I.

That judgment on the pleadings be entered on the first count as prayed for on that count.

II.

That judgment be entered on the second count in accordance with the findings and decision in writing on file herein.

WHEREFORE, by reason of the law and findings aforesaid, IT IS ORDERED AND ADJUDGED, that the Northern Light Mining Company, a corporation, the plaintiff, do have and recover of and from the Blue Goose Mining Company, a corporation, the defendant, on the first count in said complaint, the sum of Two Thousand Six Hundred and Eleven Dollars and Sixty-eight Cents (\$2611.68) with interest thereon at the rate of seven per cent (7%) per annum from the 2d day of June, 1911, [84] and that the plaintiff have judgment on the second count for the sum of Eight Thousand Three Hundred and Seventy-five Dollars (\$8375) together with interest at the rate of seven per cent (7%) per annum from the 2d day of June, 1911, together with said plaintiff's costs and disbursements incurred in said action, as per cost bill \$55.

GEO. A. STURTEVANT,

Judge.

Dated March 22d, 1912.

Recorded Book 53, page 214. March 26, 1912.

Filed Mar. 26, 1912. H. I. Mulcrevy, Clerk. By Wm. J. Egan, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

State of California,

City and County of San Francisco,—ss. [85]

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in Judgment Book 53 of said court at page 214, and I further certify that the foregoing papers hereto annexed constitute the Judgment-roll in said cause.

WITNESS my hand and the seal of said Superior Court this 26th day of March, A. D. 1912.

[Seal]

H. I. MULCREVY,

Clerk.

By S. E. P. Taylor,

Deputy Clerk.

[Endorsed on Back]: D. County Clerk. Judgment Dept. F. 30. No. 36,081. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant.

Judgment-roll. Filed March 26th, 1912. H. I. Mulcrevy, Clerk. By S. E. P. Taylor, Deputy Clerk. Recorded Judgment Book 53, Page 214. 3/26/12. [86]

In the District Court of Appeal of the State of California, Third Appellate District.

No. 1225.

S. F. No. 6397.

NORTHERN LIGHT M. COM.,

Plff. and Respt.,

vs.

BLUE GOOSE M'NG. CO., (a Corp.)

On Appeal from the Superior Court in and for the County of San Francisco.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the Court herein is delivered by Justice Burnett.

Whereupon, it is ordered, adjudged and decreed by the Court that the judgment of the Superior Court in and for the County of San Francisco in the above-entitled cause, be and the same are hereby affirmed.

(Respondent to recover costs.)

I, W. M. Lowell, Clerk of the District
Wm. M. C. Court of Appeal of the State of California,
D. C. C.
in and for the Third Appellate District, do hereby certify that the foregoing is a true copy of an

original judgment entered in the above-entitled cause on the 7th day of August, 1914, and now remaining of record in my office.

WITNESS my hand and the seal of the court, affirmed [87] at my office, this 8th day of October, A. D., 1914.

W. M. LOWELL,
Clerk.

By _____,
Deputy.

[Seal of the District Court of Appeal.]

[Endorsed on Back]: Oct. 9, 1914. 36,081. No. 1225. In the District Court of Appeal, State of California. Third Appellate District. Remittitur. M. Light Mn'g. Co. (a Corp.), vs. Blue Goose Mng. Co. (a Corp.) Filed Oct. 9, 1914. H. I. Mulcrevy, Clerk. By J. F. Dunworth, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

DEPARTMENT No. 8.

No. 36,081.

NORTHERN LIGHT MINING COMPANY, a Corporation, [88]

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Certificate of County Clerk to Judgment-roll, etc.

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and ex-officio clerk of the Supreme Court of the State of California, in and for the City and County of San Francisco, do hereby certify the foregoing to be a full, true, and correct copy of the original complaint: Plaintiff's amendment to second count of complaint, plaintiff's second amendment to second count of amended complaint, demurrer to amended answer, motion to strike out, motion for judgment etc., answer to amended complaint, answer; findings of fact and conclusions of law, judgment; certificate to judgment-roll, remittitur from the District Court of Appeal on file and of record in my office in the above-entitled cause. That the same constitute a full and complete exemplification of the judgment-roll, remittiture and opinion in said cause, and of the whole thereof.

All of which I have caused to be exemplified according to the Act of Congress.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this twenty-fourth day of May, A. D., 1916.

H. I. MULCREVY,
County Clerk and Ex-officio Clerk of the Superior Court.

[Seal of the Superior Court.]

I, Geo. H. Cabaniss, presiding Judge of the Superior Court of the State of California in and for the City and County of San Francisco, do hereby certify that said Court is a court [89] of record having

a clerk and seal. That H. I. Mulcrevy who has signed the annexed attestation, is the duly elected and qualified county clerk of the City and County of San Francisco, and was, at the time of signing said attestation, ex-officio clerk of said Superior Court. That said signature is his genuine handwriting, and that all his official acts as such clerk, are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

WITNESS my hand this 24th day of May, A. D. 1916, A. D. 190—.

GEO. H. CABANISS,

Presiding Judge of the Said Superior Court.

State of California,

City and County of San Francisco,—ss.

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and ex-officio clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, do hereby certify that the Honorable Geo. H. Cabaniss, whose name is subscribed to the preceding Certificate, is presiding Judge of the Superior Court of the State of California, in and for the City and County of San Francisco, duly elected and qualified, and that the signature of said Judge to said Certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court, [90] this 24th day of May, A. D. 1916.

H. I. MULCREVY,

County Clerk and Clerk of the Superior Court.

[Seal of the Superior Court.]

[Thirty Cents Int. Stamps Cancelled.]

[Endorsed]: No. 36,081. In the Superior Court of the State of California, in and for the City and County of San Francisco, Department No. 8. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Exemplification of Record.

[Endorsed]: #2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Company, Plaintiff, vs. Blue Goose M. C. Plt's Ex. 3, Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By —————, Deputy. [91]

Mr. ORTON.—I now offer in evidence as "Exhibit No. 4" the exemplified copy of the Notice of Appeal which appears on Page 67 of this exemplified transcript, and as "Exhibit No. 5," the Notice of Appeal from the order denying a new trial contained on page 196 of this transcript.

Mr. LOMEN.—We object to the introduction of this evidence on the ground that it is irrelevant, incompetent and immaterial.

The COURT.—The objection overruled.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Said papers being received and read in evidence and marked "Plaintiff's Exhibits No. 4 and No. 5" and which are as follows:

**Plaintiffs' Exhibit No. 5—Notice of Appeal in
Northern L. M. Co. v. Blue Goose Co.**

*In the District Court, Territory of Alaska, Second
Division.*

#2616.

N. L. MIN. CO.,

Plaintiff,

vs.

BLUE GOOSE M. CO.,

Defendant.

Plt's. Ex. 4. Def's. Ex. Filed July 17, 1916. G.
A. Adams, Clerk. By ———, Deputy. [92]

[Title of Court and Cause.]

NOTICE OF APPEAL FROM JUDGMENT.

To Northern Light Mining Co., a Corporation, Plain-
tiff; and to W. S. Andrews, Esq., and A. H.
Brandt, Esq., Its Attorneys:

*Pleas*t take notice that the Blue Goose Mining Co.,
a corporation, defendant in the above-entitled action,
hereby appeals to the Supreme Court of the State
of California from the judgment made and entered
in said Superior Court in said action on the 22d day
of March, 1912, in favor of said plaintiff and against
said defendant on the first count of the complaint filed
therein for the sum of \$2611.68, with interest thereon,
at the rate of 7% per annum from the 2d day of
June, 1911, and on the second count of the said com-
plaint for the sum of \$8375, together with interest
thereon at the rate of 7% per annum from the 2d

day of June, 1911, together with plaintiff's costs and disbursements incurred in said action.

Said appeal is taken from the whole of said judgment.

Dated at San Francisco, California, May 6, 1912.

FINK & WHITE,

Attorneys for Defendant.

Due service of the foregoing Notice of Appeal and receipt of copy thereof, is hereby admitted this 6th day of May, 1912.

W. S. ANDREWS, [93]

A. H. BRANDT,

Attorneys for Plaintiff.

Filed May 10, 1912. H. I. Mulcrevy, Clerk.
Frank H. Brunner, Deputy Clerk.

[Title of Court and Cause.]

NOTICE OF APPEAL FROM ORDER
DENYING A NEW TRIAL.

To the Clerk of Said Court, and to Northern Light Mining Company, a Corporation, Plaintiff, Above Named, and Its Attorneys W. S. Andrews, Esq., and A. H. Brandt, Esq.:

You and each of you will please take notice that the defendant in the above-entitled suit, hereby appeals to the Supreme Court of the State of California, from the order of the Superior Court of the State of California, in and for the City and County of San Francisco, given, made and entered herein, on the 30th day of September, 1912, overruling and denying defendant's motion for a new trial, and from the whole of said order.

Dated, October 2d, 1912.

FINK & WHITE,
Attorneys for Defendant. [94]

A copy of the foregoing notice received this 2d day of October, 1912.

W. S. ANDREWS,
A. H. BRANDT,
Attorneys for Plaintiff.

#2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Co., Plaintiff, vs. B. Goose M. Co., Defendant. Plt's Ex. 5. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By _____, Deputy.

Said exhibits Nos. 4 and 5, were duly exemplified by the clerk and presiding Judge of the Superior Court of the State of California in and for the City and County of San Francisco, the certificate thereto being dated the 29th day of May, 1915.

Mr. ORTON.—The next thing we will offer will be the exemplified copy of the order of the Supreme Court transferring the case to the District Court of Appeals for hearing, which will be "Exhibit No. 6."

Mr. LOMEN.—We object to the offer on the ground that the same is irrelevant, incompetent and immaterial. [95]

The COURT.—Objection overruled.

To which ruling of the Court defendant duly excepted, and an exception was allowed, said offer being received and read and marked Plaintiff's Exhibit No. 6, and being as follows:

**Plaintiff's Exhibit No. 6—Exemplified Copy of
Order of Supreme Court Transferring Cause to
District Court of Appeals.**

In the Supreme Court of the State of California.

No. —.

**NORTHERN LIGHT MINING COMPANY, a
Corporation,**

Plaintiff and Respondent,

vs.

**BLUE GOOSE MINING COMPANY, a Corpora-
tion,**

Defendant and Appellant.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify the foregoing and attached document to be a full, true and correct copy of the original order transferring the appeal in the above-entitled action from the above-entitled court to the District Court of Appeal of the State of California in and for the Third Appellate District, on file and of record in my office, in the above-entitled action; that the same constitutes a full and complete exemplification of the said order in the said action, and of the whole thereof.

All of which I have caused to be exemplified [96]
according to the act of Congress.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said Court this 15th day of September, A. D. 1915.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,

Clerk of the Supreme Court of California.

[Cancelled Ten-Cent I. R. S.]

I, Frank M. Angellotti, Chief Justice of the Supreme Court of the State of California, do hereby certify that said court is a court of record having a clerk and seal. That B. Grant Taylor, who has signed the annexed attestation, is and was at the time of the signing of said attestation the duly elected and qualified clerk of the said Supreme Court. That said signature is his genuine handwriting and that all his official acts, as such clerk, are entitled to full faith and credit.

AND I further certify that said attestation is in due form of law.

WITNESS my hand this 15th day of September, A. D. 1915.

F. M. ANGELOTTI.

[Cancelled Ten Cent I. R. S.]

State of California,—ss.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the Honorable Frank M. Angellotti, whose name is subscribed to the preceding certificate, is, and was at the time of signing said certificate, the Chief Justice of the Supreme Court of the State of [97] California, duly elected and qualified, and that the signature of said Justice to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 15th day of September, A. D. 1915.

B. GRANT TAYLOR,

[Seal of the Supreme Court of California.]

Clerk of the Supreme Court of California.

[Cancelled Ten Cent. I. R. S.]

In the Supreme Court of the State of California.

In Bank.

Friday, January 9, 1914.

By The Court.

The following cases pending in this Court are hereby transferred to the District Court of Appeal of the Third Appellate District for hearing and determination:

S. F. No.

6383 O'Hare v. Lynch, etc.

6387 Smilie v. Smilie.

6388 Giuffre v. Lauricella.

6396 Redgate v. South. Pac. Co.

6397 Northern L. Mg. Co. v. Blue Goose M. Co.

6403 Salo v. Smith.

6405 Cal. Canneries Co. v. Canton Ins. Office.

6409 Koskels etc. v. Albion Lumber Co.

6410 Barry v. Sutter.

6415 Breeze v. International Bk. Corp.

6416 Allen v. Chatfield.

6419 Taber v. Piedmont Hights.

6420 Horton v. Remillard Brick Co.

6422 Buckley v. County of Marin.

6427 Britt v. Kinard.

6428 Bragg v. Martenstein.

- 6440 Miles v. Empire State Surety Co.
6441 Vandercook v. Polk.
6443 Carr v. King. [98]
6445 Cordano v. Kelsey.
6446 Reynolds v. Jackson.
6449 Dibble v. Reliance Life Ins. Co.
6451 Weller v. Brown, et al.
6457 Hart v. Spring Valley Water Co.
6458 Parkin v. Grayson-Owen Co.
6460 Barber Asphalt Co. v. Jurgens.
6463 Grom v. Center.
6406 Slaughter etc. v. Goldberg, Bowen & Co.

[Seal of Supreme Court of California.]

[Endorsed on Back]: #2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Co., Plaintiff, vs. B. Goose M. Co., Defendant. Plt's Ex. 6. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy.

Mr. ORTON.—I now offer exemplified copy in which the judgment and order is affirmed, which will be exhibit "No. 7."

Mr. LOMEN.—We object to the offer on the ground [99] that the same is irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant duly excepted, and an exception was allowed. Whereupon said offer was received and read in evidence marked Plaintiff's Exhibit No. 7, and is as follows:

**Plaintiff's Exhibit No. 7—Exemplified Copy of
Judgment and Order of District Court of Ap-
peals.**

*In the District Court of Appeal, Third Appellate
District, State of California.*

No. 1225.

**NORTHERN LIGHT MINING COMPANY, a
Corporation,**

Plaintiff and Respondent,

vs.

**BLUE GOOSE MINING COMPANY, a Corpora-
tion,**

Defendant and Appellant.

I, John T. Stafford, Clerk of the District Court of Appeal in and for the Third Appellate District of the State of California, do hereby certify the foregoing and attached document to be a full, true and correct copy of the original order affirming the judgment and order in the above-entitled action made by the Superior Court of the City and County of San Francisco, on file and of record in my office; that the same constitutes a full and complete exemplification of the said order in the said action, and of the whole thereof. [100]

All of which I have caused to be exemplified according to the Act of Congress.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said Court this 11th day of October, A. D. 1915.

JOHN T. STAFFORD.

Clerk of the District Court of Appeal, Third Appellate District.

[Seal of District Court of Appeal, Third Appellate District.]

I, N. P. Chipman, Presiding Justice of the District Court of Appeal in and for the Third Appellate District, State of California, do hereby certify that said Court is a court of record, having a clerk and seal. That John T. Stafford, who has signed the annexed attestation, is and was at the time of signing said attestation the duly qualified clerk of the said District Court of Appeal. That said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

WITNESS my hand this 11th day of October, A. D., 1915.

N. P. CHIPMAN,

P. J.

State of California,—ss.

I, John T. Stafford, Clerk of the District Court of Appeal in and for the Third Appellate District, State of California, do hereby certify that the Hon. N. P. Chipman, [101] whose name is subscribed to the preceding certificate is and was at the time of signing said certificate, the presiding Justice of the District Court of Appeal, Third Appellate District, State of California, duly qualified, and that the sig-

nature of said Justice to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 11th day of October, A. D., 1915.

JOHN T. STAFFORD,

Clerk of the District Court of Appeal, Third Appellate District.

[Seal of District Court of Appeal, Third Appellate District.]

[Cancelled 3 Ten Cent I. R. S.]

In the District Court of Appeal in and for the Third Appellate District, State of California.

County, San Francisco, Judge, George A. Sturtevant, Civil 1225. S. F. No. 6397.

NORTHERN LIGHT MINING COMPANY, (a Corp.),

Plff. & Respt.,

vs.

BLUE GOOSE MINING COMPANY, (a Corp.),
Def't. & Appt.

August 7th, 1914. The judgment and order are affirmed,

BURNETT, J. [102]

We concur, Hart, J., Chipman, P. J.

(Respondent to recover costs.)

August 27th, 1914. Filed Petition for rehearing in this court. \$2.50.

September 7th, 1914. Filed Respts. Reply to petition for rehearing in this court.

September 8th, 1914. The petition for rehearing in this court is denied.

I, John T. Stafford, Clerk of the District Court of Appeal in and for the Third Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the Judgment entry, in the above-entitled cause, as shown by the records of my office.

WITNESS my hand and the seal of the Court, this 17th day of September, A. D. 1915.

JOHN T. STAFFORD,
Clerk.

By _____,
Deputy.

[Seal of District Court of Appeal, Third Dis.
California.]

[Cancelled Ten Cent I. R. S.]

[Endorsed]: No. 1225. In the District Court, Third Appellate District, State of California. Northern Light Mining Co., a Corporation, Plaintiff, [103] vs. Blue Goose Mining Co., a Corporation, Defendant. W. S. Andrews, Attorney at Law, First National Bank Bldg., Russ Building, San Francisco. Endorsed: #2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Co., Plaintiff, vs. B. Goose M. Co., Plt's. Ex. 7, Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By _____, Deputy.

Testimony of G. H. Russell, for Plaintiff.

WHEREUPON, Mr. G. H. Russell, a witness produced for and on behalf of the plaintiff, being duly sworn testified as follows:

I am superintendent and manager of the Northern Light Mining Company, and have been such for two years. I know of the judgment that this suit has been brought on, and that the same has not nor has any part of it been paid.

The Northern Light Mining Company paid its annual license due January 1st, 1916. [104]

Cross-examination.

The Northern Light Mining Company is operating on Ophir Creek. The character of its operations is dredge mining. It has dredged on this property situated on Ophir Creek.

Testimony of Ira D. Orton, for Plaintiff.

Mr. IRA D. ORTON, a witness produced for and on behalf of the plaintiff, testified as follows:

I am an attorney at law, and a member of the bar of the State of California. I have been a member of the bar of the State of California for twenty-four years, and have recently practiced in that State. In 1910, I practiced there during the entire winter. I practiced in the United States Circuit Court of Appeals, and was also employed as counsel in cases in the Supreme Court of the State and the District Court of Appeal, I was employed as of counsel in the Reuff case. I was associated with Albert Fink in that case. At that time I was familiar with the Constitution of

(Testimony of Ira D. Orton.)

the State of California—generally familiar with all of it—particularly familiar with parts of it, especially that part of it which establishes the District Court of Appeal and the Supreme Court.

Q. State whether or not the law at that time was as is stated in the certificate offered in evidence.

Mr. COCHRAN.—We object to the question as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court defendant duly excepted, and an exception was allowed. [105]

A. Yes, sir, these laws were in force at that time. The Constitution as set forth in this exhibit had been in force for some time at that time, and is still in force both referring to the District Court of Appeal and the Supreme Court and the Superior Court; also stated there.

I am familiar with Section 1920 which provides for interest on judgments. That has always been the law there as far as I remember, and was at that time.

Cross-examination.

(By Mr. LOMEN.)

Q. Are you familiar with the statutes of the State of California with reference to provisions in regard to service of process upon defendants?

A. Why, yes, in a general way I am.

Q. Now as far as service upon a foreign corporation is concerned, upon whom can process be served under the Statutes of California?

Mr. GRIGSBY.—Objected to as not proper cross-examination.

(Testimony of Ira D. Orton.)

The COURT.—I sustain the objection to which ruling of the Court the defendant duly excepted, and an exception was allowed.

WHEREUPON the plaintiff rested.

Testimony of J. A. Bachelder, for Plaintiff.

Mr. J. A. BACHELDER, a witness produced for and on behalf of the defendant, testified as follows:

My name is J. A. Bachelder. I know the corporation [106] known as the Blue Goose Mining Company, the defendant in this case. I am a stockholder of that company and one of its directors. I have been a director of the Blue Goose Mining Company since September, 1911. The Blue Goose Mining Company is engaged in the mining business in the Territory of Alaska.

Q. State to the Court, whether or not their business is exclusively in the Territory of Alaska.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial and leading. They appeared and for that reason we claim it is entirely immaterial whether they ever did any business down there or not.

The COURT.—I rule the question out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Mr. Bachelder is the defendant corporation engaged in any business in the State of California?

Mr. ORTON.—The same objection, irrelevant, incompetent and immaterial, and nothing whatever to do with this case as to whether or not they are engaged in business in the State of California.

The COURT.—I rule it out.

(Testimony of J. A. Bachelder.)

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

Q. Were they engaged in any business in the State of [107] California, or did they have any officer in the State of California in the year 1911?

Mr. ORTON.—The same objection.

The COURT.—Rule it out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—We offer to prove by this witness now upon the stand who has testified that he is and was a director of the corporation, that the corporation was not engaged in business in the State of California during the year 1911, and had no officer of any character in the State of California.

Mr. ORTON.—Objected to as being entirely irrelevant, incompetent and immaterial, and does not tend to impeach this record.

The COURT.—Rule it out.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

I am familiar with the by-laws of the Blue Goose Mining Company, and they provide for the election of general counsel by the board of directors. I know Albert Fink and Thos. R. White known as the firm of Fink & White, Lawyers of San Francisco, California.

Q. Did they represent, or have they authority to represent the Blue Goose Mining Company during the year 1911 or at all? [108]

Mr. ORTON.—That is objected to as immaterial

(Testimony of J. A. Bachelder.)

and not the proper way to prove authority; it is not always within the knowledge of a director of a company who is authorized to act as attorneys for the company; this is very improper and they cannot prove this in this way. It is not the business of a director to employ counsel, but the business of the chief executive officer of the corporation, and it is not for him to say whether the corporation employed them or not, that he can say is that he did not do so.

The COURT.—I rule the question out.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

About a year ago, maybe a little more, I first learned of an action in the Superior Court of the State of California in and for the City and County of San Francisco, entitled the Northern Light Mining Company, a corporation, plaintiff, vs. the Blue Goose Mining Company, a corporation, defendant, which action was begun on the 2d day of January, 1911, and went to judgment therein on the 22d day of March, 1912. I did not learn of this action until after and subsequent to the date of the judgment therein. I had no knowledge of such proceeding until they were determined. I have been at every meeting of the board of directors of the Blue Goose Mining Company since 1911, and the board of directors of the Blue Goose Mining Company have had no meeting regular or special since 1911 or during 1911, that I was not present at.

Q. Were the board of directors ever apprised of this action pending or brought in the Superior Court

(Testimony of J. A. Bachelder.)

of the State of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Ask him if the matter ever came up before the board of directors.

Q. Did the matter of this law suit ever come up before the [109] board of directors in any manner or form. Did the question of this action in the State Courts of California ever come up before the board of directors at any of their meetings since the inception of this *this* action and until long subsequent to the judgment therein? A. I did not.

Q. Mr. Bachelder, had the defendant corporation at any time in the year 1911, or since that date, or at all, any property within the State of California?

Mr. ORTON.—I object to that question as being irrelevant, incompetent and immaterial.

The COURT.—Rule the question out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Cross-examination.

(By Mr. ORTON.)

I am a stockholder of the Blue Goose Mining Company, I own ten shares of stock. The total capital stock of said company is 500,000 shares, and I own ten shares. That is all the interest I have in the company is ten shares out of Five Hundred Thousand shares. I am assistant treasurer of the company, Mr. Stevenson is treasurer. Mr. Stevenson was elected secretary and treasurer of the company in 1911.

(Testimony of J. A. Bachelder.)

My business is that of the bank; I am also employed by the Pioneer Mining Company in the summer time. Mr. Jafet Lindeberg is president of the Pioneer Mining Company. I [110] think Mr. G. W. Campbell was secretary of the Blue Goose Mining Company prior to the 22d day of September, 1911.

Q. Was it not Thos. R. White.

A. I am not sure.

I was present at the meeting of the board of directors of the Blue Goose Mining Company on the 22d day of September, 1911, but I was not present at the stockholders meeting of that date.

Q. And there was nothing said about this case at that time? A. There was not.

Mr. Lindeberg was present at that meeting.

Q. Now you didn't have another meeting of the board of directors until October 21st, 1912, did you?

A. I don't think so.

Q. Now, you had a meeting September 22d, 1911, when did you have the next meeting of the board?

A. Well, I don't remember the date; it was in October, I should say, 1912.

Q. Did you have any meeting of the board of directors in between those times?

A. Not that I know of. I think Mr. Lomen was elected general counsel of the Blue Goose Mining Company in 1911, prior to this meeting in 1911. I had nothing to do with the company and did not know who was secretary prior to September 22d,

(Testimony of J. A. Bachelder.)

1911. I do not know who the officers were prior to that date. [111]

Q. (Examining minutes of the Blue Goose Mining Co.) Now I have got up to the meeting here of October 21st, 1912, adjourned meeting of the stockholders—were you present at that meeting? A. I was.

Mr. LOMEN.—That was subsequent to the judgment, your Honor.

The COURT.—You ought to put those dates down so you won't forget them,—when this suit was commenced and when it was ended, and then you won't get confused. I cannot keep it in my mind. Confine yourself in your examination from the time that suit was commenced until it ended.

Mr. ORTON.—This case was commenced June 2d, 1911, judgment was entered in the Superior Court March 22d, 1912. It went to the higher courts and didn't get back down and thereafter affirmed until October, 1914, and was pending during all that time, so that I say it was pending October 21st, 1912.

Mr. COCHRAN.—So it limits it down to the date *date* of the commencement of this action in June, 1911, until the entry of judgment by the trial Court in March, 1912. [112]

The COURT.—Confine yourself within those limits.

Q. Then from the time this case was commenced in 1911, in June until March, 1912, you never had but one meeting, did you? A. I think not.

I am now assistant treasurer of the company. I

(Testimony of J. A. Bachelder.)

don't think I was assistant treasurer during the period mentioned between June, 1911, and March, 1912—I think I was only a director in the company.

Q. Did you ever do any business for the company whatever except to go to that one director's meeting during that time?

A. Yes, I have done business for the company looking after their affairs, their shipments and one thing or another, in that way.

I did not do that as a director, I did not do anything as a director except to attend that one meeting during that period—I think I kept the books of the company during a part of that time—I did not keep the books as a director, simply as an employee I suppose, as an employee of the Pioneer Mining Company. The Pioneer Mining Company were keeping their books. I am keeping books for the Pioneer Mining Company.

The other directors of the Blue Goose Mining Company were Jafet Lindeberg, J. J. Cole, L. Stevenson, G. J. Lomen and myself as elected Sept. 27, 1911.

All that was done at the meeting of the directors in September 22d, 1911, was put on the minutes. At that time [113] the company was doing a comparatively large business.

Mr. ORTON.—I offer a copy of this page of the minute-book in evidence in connection with the examination of this witness, for the purpose of showing what was done at that meeting of the directors of September 27, 1911.

Said copy of said page of said minutes were received and read in evidence and marked Plaintiff's Exhibit No. 8 and are as follows:

Plaintiff's Exhibit No. 8—Excerpts from Minutes of Meeting of Board of Directors of Blue Goose M. Co., Sept. 27, 1911.

“#2616. In the District Court, Territory of Alaska,
Second Division.

N. L. Min. Co., Plaintiff, vs. B. G. Min. Co., Defendant.

Plt's Ex. 8. Def't Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy.

MINUTES OF A MEETING OF A BOARD OF DIRECTORS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, September 27th, 1911. [114]

Immediately upon the adjournment of the stockholders' meeting heretofore held on the 27th day of September, 1911, the board of directors elected at said stockholders' meeting, met in the offices of the Pioneer Mining Company at Nome, Alaska.

There were present the following board, consisting of Jafet Lindeberg, J. J. Cole, L. Stevenson, G. J. Lomen and J. A. Bachelder;

Jafet Lindeberg placed in nomination for the office of president of the company for the ensuing year, was duly elected president.

J. J. Cole, being duly placed in nomination for the office of vice-president of said company, for the ensuing year, was unanimously elected vice-president.

L. Stevenson being placed in nomination for the office of secretary and treasurer for said company

(Testimony of J. A. Bachelder.)

for the ensuing year, was duly elected secretary and treasurer.

On motion G. J. Lomen was elected general counsel.

On motion meeting adjourned.

L. STEVENSON,
Secretary."

Q. That was the only meeting that was held from the time you were elected a director on September 22d, 1911, until the next meeting of the directors which was October 21st, 1912.

A. That was the only one.

Testimony of J. J. Cole, for Defendant.

J. J. COLE, a witness produced on behalf of the defendant [115] being duly sworn, testified as follows:

My name is J. J. Cole. I am a director and vice-president of the defendant corporation. I have been a director—I think, for six or seven years, I don't know from just what date I was a director—before June 2d, 1911, and have been a director since then and up to the present time. I have been vice-president of the company since 1909, or 1910. Mr. Lindenberg has been president of the company since and prior to June 2d, 1911. The business of the corporation is at Nome and in council in the Territory of Alaska.

Q. (By Mr. COCHRAN.) Has the company any business elsewhere?

Mr. ORTON.—Objected to as entirely immaterial, irrelevant and incompetent.

(Testimony of J. J. Cole.)

The COURT.—I rule it out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Now, did the Blue Goose Mining Company, the defendant herein, have any business of any kind in the State of California prior or subsequent to the 2d day of June, 1911?

Mr. ORTON.—Objected to as entirely incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant then and there duly excepted and an exception was allowed. [116]

Q. Mr. Cole, on the 2d day of June, 1911, or prior or subsequent thereto, did the defendant corporation own any property or have any office within the State of California or elsewhere other than within the Territory of Alaska?

Mr. ORTON.—Objected to as entirely immaterial in this case and incompetent.

The COURT.—Objection sustained.

To which ruling of the Court the defendant then and there duly excepted and an exception was allowed.

Mr. COCHRAN.—We offer to prove by the witness now on the stand, shown to be the vice-president and a director of the defendant corporation during the time since the 2d day of June, 1911, that the defendant corporation did not, prior or subsequent to that date, have any property within the State of California, nor did it upon or prior or subsequent to

(Testimony of J. J. Cole.)

such date, have any office within, or performed any business within the State of California.

Mr. ORTON.—We object to the offer as being immaterial and incompetent. [117]

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

I have been present at all of the meetings of the board of directors since the 2d day of June, 1911. The meetings of the board of directors were held in the office of the Pioneer Mining Company, at Nome, Alaska.

Q. Did the directors of the Blue Goose Mining Company employ or authorize Messrs. Fink & White or either of them to appear as attorneys for them in any litigation in the State of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, and not the proper way to prove want of authority.

The COURT.—Objection sustained.

To which ruling of the Court the defendant then and there duly excepted and an exception was allowed.

I know of an action brought in the Superior Court of the State of California in and for the City and County of San Francisco, entitled the Northern Light Mining Company vs. Blue Goose Mining Company. I first learned of that action being brought, either in the fall of 1912 or in the spring of 1913, I cannot place the date exactly. I had no knowledge

(Testimony of J. J. Cole.)

of such action being brought prior to the 22d day of March, 1912. The fact of such an action pending in the courts of [118] California was never brought up at any meeting before the board of directors at their meetings.

Cross-examination.

By Mr. ORTON.—I think it was in 1910 that I was first elected a director of the defendant corporation. I think Mr. Lindeberg was elected president in 1910. He has been president ever since I was elected vice-president.

Mr. ORTON.—I wish to offer that part of the minutes of the company in connection with the testimony of this witness.

A copy of said portion of said minutes were received and read in evidence and marked Plaintiff's Exhibit No. 9, and is as follows:

Plaintiff's Exhibit No. 9—Excerpts from Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 23, 1910.

“#2616 In the District Court, Territory of Alaska,
Second Division.

N. L. Min. Co., Plaintiff, vs. B. G. Min. Co., Defendant.

Plt's Ex 9. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE BLUE GOOSE MINING CO. [119]

Nome, Alaska, September 23d, 1910.

Mr. Lindeberg was nominated by Mr. Campbell to

(Testimony of J. J. Cole.)

hold the office of president of the company for the ensuing year. There being no further nominations, on motion duly made and unanimously carried, Mr. Jafet Lindeberg was elected president of the Blue Goose Mining Company for the ensuing year, to have all of the powers of such office and such other powers as have heretofore by the board of directors of said company been given him.

THOS. R. WHITE,
Secretary."

I think Mr. Campbell was elected treasurer at that time, and held office until the next meeting. I have in the neighborhood of twenty thousand shares of stock in the company which I hold as trustee for the Miners & Merchants Bank. I have no shares personally. I have no personal interest in the company. I have an interest in the trust so far as being a stockholder in the Miners & Merchants Bank is concerned.

The matter of this suit was never brought up at any time before the directors at their meetings. I knew about it in the fall of 1912 and went to the meetings of the stockholders each meeting and did not say anything about this suit.

Q. Now, you really only had one meeting after the time this suit was commenced until judgment was entered in the Superior Court—you was at that meeting? [120]

A. I was at all the directors meeting that were held.

I was present at the meeting where Mr. Lomen was elected general counsel. All that occurred at

(Testimony of J. J. Cole.)

that meeting was upon that page of the minutes. The officers of the company elected in 1910, held over until the next meeting in 1911, in September.

Q. Mr. Campbell was elected treasurer and Thos. R. White of the firm of Fink & White, the secretary?

A. I could not say.

Mr. COCHRAN.—It is admitted that Thos. R. White was elected secretary on the 23d day of September, 1910, for the ensuing year, and that Mr. G. W. Campbell was elected treasurer at such meeting for the ensuing year.

Mr. COCHRAN.—If the Court pleases, we now offer in evidence the Articles of Incorporation of the Blue Goose Mining Company.

Said Articles of Incorporation being received in evidence and marked Defendant's Exhibit "A," and are as follows:

**Defendant's Exhibit "A"—Articles of Incorporation
of Blue Goose M. Co.**

**ARTICLES OF INCORPORATION OF BLUE
GOOSE MINING COMPANY.**

KNOW ALL MEN BY THESE PRESENTS:
That we, the undersigned, adult persons and *bona*
[121] *fide* residents of the District of Alaska, desiring to avail ourselves of Section 5, of an act of Congress of March 2, 1903, entitled "An Act Amending the Civil Code of Alaska, providing for the organization of private corporations and for other purposes," have and by these presents do, under the conditions and subject to the limitations hereinafter ex-

pressed, organized the Blue Goose Mining Company, a corporation, as follows, to wit:

ARTICLE I.

1.

The name of the corporation is Blue Goose Mining Company.

2.

The nature and character of the business of said corporation shall be as follows, to wit:

First. To construct, own and operate railroads, tramways, street railways, wagon roads, canals, flumes and telegraph and telephone lines in Alaska.

Second. To acquire, hold and operate mines in Alaska.

Third. To carry on the fishery industry in all its branches in Alaska, and in the waters contiguous and adjacent thereto.

Fourth. To construct and operate smelters, electric and other power and lighting plants, docks, wharves, elevators, warehouses and hotels in Alaska.
[122]

Fifth. To carry on trade, transportation, agriculture, limbering, and manufacturing in Alaska.

Sixth. Also to build, own, operate, dig and construct ditches, canals, flumes, pip-lines, dams and reservoirs, for public and private use, and in that connection to make, fix and collect rates for the use of said ditches, flumes, pipe-lines, canals, dams, and reservoirs, and the water therein flowing, or therein held or contained.

Seventh. To borrow and loan money, and in that connection to pledge, mortgage and hypothecate the

name, stock, assets, real and personal property of said corporation.

Eighth. To buy, sell pledge, mortgage, hypothecate, and exchange all and singular each and every kind of real and personal property in the District of Alaska, and elsewhere.

Ninth. To build, construct and operate saw-mills, and machine-shops.

Tenth. To do all and singular each and every act and thing necessary or requisite to the full use and enjoyment of the privileges, matters and things hereinbefore set forth.

3.

The principal place of transacting the business of said corporation shall be at Nome, Alaska. [123]

ARTICLE II.

1.

The date of the commencement of said corporation shall be the 23d day of August, A. D, 1904, and the period of continuance of said corporation shall be fifty (50) years.

ARTICLE III.

1.

The amount of the capital stock of said corporation shall be Five Hundred Thousand (500,000) Dollars.

2.

The capital stock of said corporation shall be paid in money, labor, or property, estimated at its true money value.

3.

The number of shares of the capital stock of said

corporation, shall be Five Hundred Thousand (500,00) shares, of the par value of One (1) Dollar, each.

4.

No stock shall be issued by said corporation until the same shall have been fully paid for, which fact shall appear on the certificates of stock, but this shall not preclude the corporation from disposing of its Treasury Stock, for a less sum than its par value.

[124]

5.

The corporation shall under no circumstances levy or collect any assessment on its outstanding stock, and each certificate of stock, shall have printed thereon the words "Nonassessable."

ARTICLE IV.

1.

The highest amount of indebtedness to which said corporation shall at any time be subject, shall be Five Hundred Thousand (500,00) Dollars.

ARTICLE V.

1.

THE names and places of residence of the persons forming said corporation are as follows, to wit:

NAMES.	RESIDENCE.
Leo Loewenherz	Nome, Alaska.
A. J. Daley	" "
Albert Fink	" "
E. W. Renniger	" "
Harry S. Moore	" "

ARTICLE VI.

1.

The names of the first board of directors of [125]
said corporation shall be as follows:

LEO LOWENHERZ.

A. J. DALEY.

ALBERT FINK.

E. W. RENNIGER.

HARRY S. MOORE.

2.

The government of the corporation and the management of its affairs shall be vested in a board of directors, composed of five persons who shall be stockholders in said corporation, and who shall be elected at an annual stockholders' meeting to be held on the first Monday in August, of each year, and whose term of office shall be for one year thereafter, and until their successors are elected and qualified.

ARTICLE VII.

1.

The Articles of Incorporation of said corporation may be amended when authorized by a vote of a majority of the stock, given at any regular meeting of the stockholders, such amended articles shall be executed and acknowledged by the board of directors, or a majority of them, and shall be filed and recorded in the same places and manner as the original articles. [126]

ARTICLE VIII.

1.

The first meeting of the board of directors, shall be held in Nome, Alaska, as soon as convenient after

the filing of the foregoing Articles of Incorporation, and shall be called by a notice signed by one of the Directors named in the Articles of Incorporation, which said notice shall state the time, and place of meeting, and shall be served on each of the directors named in said Articles of Incorporation.

All other meetings of the board of directors shall be as provided for in the By-laws.

ARTICLE IX.

1.

Each of the undersigned incorporators hereby subscribe to ten shares each, of the Capital stock of said corporation.

IN WITNESS WHEREOF, we, the undersigned, incorporators, have hereunto set our hands this 23d day of August, 1904.

LEO LOEWENHERZ.

A. J. DALEY.

ALBERT FINK.

E. W. RINNIGER.

HARRY S. MOORE.

United States of America, [127]

District of Alaska,—ss.

This is to certify, that on this 23d day of August, A. D. 1904, before me, the undersigned, a notary public, in and for the District of Alaska, personally appeared Leo Loewenherz, A. J. Daley, Albert Fink, E. W. Rinniger and Harry S. Moore, each of whom acknowledged to me that he is an adult person and a *bona fide* resident of the District of Alaska, and that he executed the foregoing Articles of Incorporation for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[Notarial Seal] JEREMIAH COUSBY,
Notary Public in and for the District of Alaska,
Residing at Nome.

[Endorsed on Back]: #172. Articles of Incorporation of the Blue Goose Mining Company. Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. Aug. 23, 1904. Geo. V. Borchsenius, Clerk. By Jno. H. Dunn, Deputy Clerk. Record of Articles #1, Page 24. 18.2. 270 Filing 10—\$2.80.

[Endorsed]: #2616. In the District Court, Territory of Alaska, [128] Second Division. N. L. Min. Co., Plaintiff, vs. B. G. Min. Co., Defendant. Plt's Ex., Deft's Ex. "A." Filed July 17, 1916. G. A. Adams, Clerk. By ————, Deputy.

Mr. COCHRAN.—We next offer in evidence the By-Laws of the Blue Goose Mining Company.

Mr. ORTON.—We object to the offer as being entirely incompetent, for any purpose.

The COURT.—I do not think that they are admissible in this proceeding.

To which ruling of the Court the defendant then and there duly excepted, and an exception was allowed.

Mr. COCHRAN.—Then I will have to read them into the record. I offer to prove—

Mr. GRIGSBY.—Have the offer in writing, then.

Mr. COCHRAN.—I offer in evidence the minute-book of the Blue Goose Mining Company. I cannot

make a proper offer until we get the secretary or unless these gentlemen will waive this technical objection.

Mr. ORTON.—For the purpose of you making that offer, I will admit that that is the [129] original and genuine minute-book of the corporation. I have already used it myself. I admit that the By-Laws of the corporation are written there on pages 3, 4, 5, 6, 7, 8, and 9 and concluded on page 10, and certified to by the secretary on page 11. I will also admit that the minute-book shows they were regularly adopted, but I object to the evidence as being entirely incompetent. I object to having them read. It is a document and can be marked and identified, and don't need to be read. I am willing to substitute a copy afterwards, you can have the original marked and substitute a copy.

Said minutes were received by the clerk and marked Exhibit "B" for identification, and are as follows:

Defendant's Exhibit "B" for Identification—By-laws of the Blue Goose M. Co.

BY-LAWS OF THE BLUE GOOSE MINING COMPANY.

ARTICLE I.

Seal and Place of Business.

Section 1. The corporate seal of this corporation until such time as a proper seal can be secured, shall be as follows:

Section 2. Until changed by the directors, the general office of this corporation shall be at the law offices of Albert Fink, in Nome, Alaska, but the di-

rectors may at any regular or special meeting change the place of such office. [130]

ARTICLE II.

Capital Stock.

Section 1. All certificates of stock shall be signed by the president and secretary of this corporation, and sealed with the corporate seal.

Section 2. The directors may provide for the registration of all stock by some bank or trust company.

Section 3. Shares of capital stock may be transferred on indorsement of the certificate, and its surrender to the secretary for cancellation, whereupon the stock shall be transferred upon the books of the corporation, and the transferee shall be entitled to have a new certificate issued to him. The board of directors may by resolution forbid the transfer of stock on the books of the corporation for a space of time, not exceeding thirty days, immediately before a meeting of the stockholders, or immediately before the payment of a dividend.

Section 4. In case of loss or destruction of a certificate of the capital stock, the owner shall not be entitled to receive a new certificate in lieu thereof until a lapse of sixty days, after written notice of such loss or destruction has been served on the secretary, and then only on making satisfactory proof of such loss or destruction, and on giving the corporation ample indemnity, by bond or otherwise, as the directors may prescribe. Any new certificate issued under such circumstances shall have plainly marked "Duplicate," on the face thereof.

Section 5. In case of the death of a stockholder a new certificate may be issued to his personal representative [131] on surrender of the old certificate, and on filing with the secretary a duly certified copy of the letters testamentary or of administration.

ARTICLE III.

Stockholders' Meetings.

Section 1. The regular annual meeting of the stockholders of this corporation shall be held at the general offices of the corporation on the first Monday in August, of each year, at the hour of 2 o'clock P. M., and said meeting may be adjourned from day to day, until its business is completed.

Section 2. Special meeting of the stockholders may be called by a majority of the directors at such times and places as may be selected; and the directors shall call a meeting of the stockholders after a written request so to do signed by the owners of a majority of the outstanding stock of the corporation. Such special meetings shall be called at the same place and the same hour, as the regular annual meetings.

Section 3. Whenever a special meeting of the stockholders is called, the secretary shall mail to each of the stockholders, at his last known address, a written or printed notice of the time and place of holding such special meeting; said notice shall be mailed at least thirty days before the day of the meeting.

Section 4. At all meetings of the stockholders each stockholder shall be entitled to cast one vote for each [132] share of stock held by him, and such votes may be cast in person or by proxy. All prox-

ies shall be in writing, signed by the stockholder, and acknowledged like a conveyance of land.

Section 5. At any stockholders' meeting a majority of the stock issued must be represented in order to constitute a quorum for the transaction of business; but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to some other day.

Section 6. The president and secretary of the corporation shall act as the president and secretary, respectively, at each stockholders' meeting, and the directors of the corporation, or a committee appointed by them from their own number, shall pass on the authenticity of proxies.

ARTICLE IV.

Directors.

Section 1. The affairs of this corporation shall be managed by a board of five directors, who shall be stockholders, and who shall be elected by the stockholders at the regular annual meeting, and who shall hold office for one year, and until their successors are elected and qualified.

Section 2. The directors shall elect all the other officers of the corporation. Such election shall be held annually, as soon as possible after the annual stockholders' meeting. All the officers of the corporation shall hold office during the pleasure of the board of directors, [133] but no officer once regularly elected by the board of directors shall be removed from office except by a full board.

Section 3. Vacancies in the offices of the corporation or in the board of directors may be filled by

election by the remaining members of the board of directors, at any regular or special meeting of the board.

Section 4. A transfer by a director of all his stock in the corporation shall operate as a resignation of his office.

Section 5. Directors shall not receive any salary or compensation for their services as directors, but a director who is also an officer of the corporation may, by resolution of the board, receive compensation for his services as such officer.

Section 6. Regular meetings of the board of directors shall be held annually after the adjournment of each regular annual meeting of the stockholders.

Section 7. Special meetings of the board of directors may be called at any time by the president, or by any two directors, by personal notice to each director, who may be found in Nome, Alaska.

Section 8. At any regular or special meeting of the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, but a similar number may adjourn the meeting to some other day. [134]

ARTICLE V.

Officers.

Section 1. The officers of this corporation shall be a president, vice-president, secretary, treasurer, and general counsel. They shall be elected by the directors as soon as practicable after each election of directors, and shall hold office during the pleasure

of the board, and until their successors are elected and qualified.

Section 2. Only directors shall be eligible to the offices of president and vice-president. A president or vice-president who ceases to be a director shall cease to hold office as president or vice-president as soon as his successor is elected. Any and all of the offices of said corporation may be held by the same person at the same time, with the exceptions of the offices of president and vice-president.

Section 3. The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and stockholders, shall prepare and present at each annual stockholders' meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all the duties usually appertaining to the offices of president of a corporation. He shall have general charge (subject to the control of the Board of Directors) of the business affairs of the corporation, may [135] sign and indorse bonds, bills, checks and promissory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power without the previous consent of the board of directors to incur any debt on behalf of the corporation in excess of the sum of Five Hundred Dollars, or without such consent to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the

directors advised as to the affairs of the corporation.

Section 4. The vice-president shall preside at any meetings of the stockholders and of the directors from which the president may be absent, and he may perform any of the other duties of the president, during the absence of the latter, whenever directed to do so by vote of the board of directors.

Section 5. The secretary shall keep the minutes of all stockholders' and directors' meetings, shall keep the stock register and stock transfer book, and shall be the custodian of the corporate seal, and of all records, papers, files and books of the corporation. He shall affix the corporate seal to all documents to which it should be attached, and attest the same by his signature, and shall perform generally all the duties usually appertaining to the office of secretary of a corporation.

Section 6. The treasurer shall have custody of all the money and funds of the corporation, shall keep all the money and funds of the corporation, shall keep its books [136] of account, and shall countersign all checks of the corporation. He shall deposit the funds of the corporation in some bank or banks to be selected by him with the approval of the Board of Directors, in the name of the corporation. Whenever requested to do so, he shall give bond to the corporation in any amount to be fixed by the board of directors, and with sureties to be approved by them. He shall at all times keep the directors fully informed as to the financial condition of the corporation, and he shall prepare and present at each annual stockholders' meeting a report showing the receipts

and disbursements of the preceding year, and the present financial condition of the corporation. He shall be the general financial officer of the corporation, and he shall prepare and present at each annual taining to the office of treasurer of a corporation.

Section 7. The general counsel shall be the legal adviser of the corporation, and shall perform such services and receive such compensation as may be determined by the board of directors.

ARTICLE VI.

Amendments.

Section 1. These by-laws or any of them, may be altered, amended, added to, or repealed at any regular or special meeting of a full board of directors.

BE IT RESOLVED by the board of directors of the Blue Goose Mining Company, that the foregoing by-laws shall [137] be and are hereby adopted, as the By-laws of the Blue Goose Mining Company.

In Witness Whereof, we, the undersigned, directors and owners of all outstanding stock of said corporation, have hereunto set our hands this — day of August, A. D. 1904.

[Endorsed]: #172. N. L. M. Co., vs. B. G. M. Co.
Deft's Ex. B. for Identification. July 17, 1916. G.
A. Adams, Clerk, Dis. Court.

Testimony of G. J. Lomen, for Defendant.

G. J. LOMEN, a witness produced on behalf of the defendant, testified as follows:

My name is G. J. Lomen. I am an attorney at law duly admitted to practice law in the courts of the Territory of Alaska. I am one of the attorneys for the defendant in this action. I hold the office of general counsel of the [138] defendant Blue Goose Mining Company, and am also a director of the company. I have been a director since 1909 or 1910. Since I became a director I have attended every meeting of the board of directors.

I know Thos. R. White; he was a member of the board of directors of the defendant company either in 1909 or 1910; I now know of the case of the Northern Light Mining Company, plaintiff, vs. Blue Goose Mining Company, defendant, instituted in the Superior Court of the State of California in and for the City and County of San Francisco. I first learned of such a case in the summer of 1912, after the opening of navigation. I did not know anything about the pendency of that case between the 2d day of June, 1911, and the 22d day of March, 1912. I did not know of any such action pending until after the judgment was entered. The matter of that case pending was never presented to the board of directors during the period between the 2d day of June, 1911, and the date of the entry of judgment on the 22d day of March, 1912.

I know Messrs. Fink & White, the attorneys whose names are signed to the answer in that case in the

(Testimony of G. J. Lomen.)

Superior Court of California, in and for the City and County of San Francisco. I know them personally.

Q. Were they at that time, that is at any time before or between the 2d day of June, 1911, and the 22d day of March, 1912, attorneys or representatives of the Blue Goose Mining Company?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, and not within [139] the presumed knowledge of the witness and calling for a conclusion.

The COURT.—This is a suit against a corporation so there can be no doubt about it. If it was a suit against the witness himself, for instance, as to him employment as counsel in the suit, it would be properly admissible, on the ground that while the record is *prima facie* evidence of the employment it may be rebutted. There is no doubt about that being the law. This is a corporation, however, and the witness can only testify what there is within his personal knowledge as to the employment of counsel by the corporation, so the Court will ask the witness whether or not it is within your personal knowledge that the corporation did or did not employ counsel in the California suit?

The WITNESS.—Well, I cannot answer that by yes or no, your Honor, for the reason—

The COURT.—(Interrupting.) You will have to answer it yes or no.

The WITNESS.—I can say that I have personal knowledge of the meetings of the board of directors

(Testimony of G. J. Lomen.)

and to that extent could testify, but to answer generally it wouldn't be right for me to do that.

The COURT.—Well, we will have to rule the [140] question out then.

To which ruling of the Court the defendant then and there duly excepted, and an exception was allowed.

Q. (By Mr. COCHRAN.)—I will put it in a different form. Since you have been a member of the board of directors, did the board of directors authorize the employment at any time of Messrs. Fink and White, or other counsel, to represent the defendant, or appear for the defendant in the case in question?

Mr. ORTON.—That is objected to as irrelevant, incompetent and immaterial and calling for the conclusion of the witness.

The COURT.—I rule the question out.

To which ruling of the Court the defendant then and there duly excepted, and an exception was allowed.

Q. Did the board of directors meeting as a board of directors, at any meeting authorize the employment of Messrs. Fink and White or other counsel, to represent or appear for the corporation in the action in question in the State Courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, the minutes themselves read in court are the best evidence on that.

The COURT.—I will have to rule the question out. I think the minutes speak for themselves.

(Testimony of G. J. Lomen.)

Q. Now state whether or not the defendant corporation has [141] since you have been a director of that corporation up to the 22d day of March, the date of the entry of this judgment, owned any property within the State of California.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

Q. Since you have been a director of the corporation, state if you know, whether or not the defendant corporation has, or did it do any business within the State of California prior to the 22d day of March, 1912?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant corporation authorize Messrs. Fink & White to appear or represent the defendant in the action in the State courts of California so far as you know as a director of the corporation.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—He has already stated he didn't know whether they had authority or not within his personal knowledge; objection sustained. [142]

(Testimony of G. J. Lomen.)

The WITNESS.—I think your Honor misunderstood my answer.

The COURT.—How was that?

The WITNESS.—I don't think I ever answered the way your Honor puts it now. I have some knowledge.

The COURT.—You stated you had no personal knowledge.

The WITNESS.—I have some knowledge, but I haven't all the knowledge.

I have been a director and general counsel during this entire period of which I speak—I have attended every meeting of the board of directors during the period.

Mr. COCHRAN.—I will repeat the question. Did the corporation authorize Messrs. Fink and White, to your knowledge, to appear or represent the defendant corporation in this action in the State Courts of California?

Mr. ORTON.—That is objected to—the corporation can only act through its officers.

The COURT.—I sustain the objection.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the board of directors at any time within your knowledge, authorize Messrs. Fink and White or other counsel to represent the defendant or appear for them in the [143] action in question in the State Courts of California?

Mr. ORTON.—Objected to, the minutes of the

(Testimony of G. J. Lomen.)

board being read in court is the best evidence.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I offer to prove by the witness now on the stand that he has knowledge of all the acts of the board of directors since the year 1909; that the board of directors at no time authorized the appearance of Fink and White for the defendant in the action in question in the State Courts of California, or to represent the defendant in such action.

Mr. ORTON.—Objected to, as it appears that the minutes of the corporation are read in court and that they are the best evidence.

The COURT.—Objection sustained.

To which ruling of the Court the defendant excepted and an exception was allowed.

I was elected as general counsel for the Blue Goose Mining Company, September 22d, 1911. This was the first employment I had with the company.

Q. Just state what your duties were as counsel for the corporation with relation to litigation of the corporation.

Mr. ORTON.—Objected to as not competent evidence. [144]

The COURT.—Objection sustained.

To which ruling of the Court defendant excepted and an exception was allowed.

Q. State whether or not there was during the year 1911 or 1912, any agent or representative of the defendant resident of the State of California who had

(Testimony of G. J. Lomen.)

authority from the board of directors to accept service of process in the State of California issuing from the courts of that State, or who had authority from the board of directors to appear, represent or defend any actions brought against the defendant in the courts of said State of California, or who had authority from the board of directors of the corporation to employ any one to appear, represent or defend actions brought against the defendant within the State of California in the State Courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Cross-examination.

(By Mr. ORTON.)—I did not learn of this judgment until after the date upon which the judgment had been entered in California. I was elected general counsel for the defendant on September 22, 1911.

[145] Mr. Fink had been general counsel at one time a number of years before, that was the same Albert Fink who appeared as attorney for the company down in California in this case.

I was a director of the defendant prior to the time I was elected general counsel. The board of directors, prior to September, 1911, were Jafet Lindeberg, J. J. Cole, Thomas R. White, and G. W. Campbell and myself. We were elected on the 23d day

(Testimony of G. J. Lomen.)

of September, 1910, and served for the ensuing year. Thomas R. White is the same man that appeared as attorney for the defendant in this case in the courts of California, in and for the City and County of San Francisco.

Redirect Examination.

By Mr. COCHRAN.—(Witness Continuing.) Mr. G. W. Campbell was elected the treasurer of the company at a meeting of the board of directors on September 23d, 1910, and Mr. Thos. R. White was elected secretary. These two offices were divided at that time, but are united now.

Mr. White left Alaska in the fall of 1910 to remain away; he sold his house and closed his business and left with his family. Mr. Campbell left Alaska early in the summer of 1910; he was ill at the time. During that period Mr. White was not counsel or authorized counsel for the defendant.

Recross-examination.

(By Mr. ORTON.)

Q. That is, so far as you know? [146]

A. I am always speaking of my own knowledge at any time. I had not at that time been elected general counsel, but was a director. I think there was an adjourned meeting of the board of directors prior to the meeting of September 27th, but I don't know whether there was or not.

Q. You were not an executive officer of the company?

A. Well, I am an officer under the By-laws. I

(Testimony of G. J. Lomen.)

was only a director at that time.

Q. During that time Mr. White was secretary and you didn't have any meeting from the time you were elected until the next annual meeting, did you?

A. No, sir. I had never been in California prior to that time. My recollection is that Mr. White went out in the fall of 1910. I think Mr. Campbell was elected in 1910 and went out the following winter and returned again in the summer of 1911. He went out again in 1911, but did not return the following year. Mr. Campbell was treasurer of the Pioneer Mining Company here. I do not know whether or not he is still treasurer of the company. Mr. Campbell's home is in San Jose, California. I know he has an office in San Francisco from time to time.

Testimony of L. Stevenson, for Defendant.

Mr. L. STEVENSON, a witness produced on behalf of the defendant, testified as follows:

My name is Louis Stevenson. I reside in Nome and [147] have resided there for fifteen years. I am secretary and treasurer of the Blue Goose Mining Company and have the custody of its books and minutes. I am a member of the board of directors and have been a member of the board I think since 1911; the minutes will show whether I am right or not. I am a stockholder of the corporation and own ten shares of stock which belong to me.

Q. I will show you this book and ask you to state whether or not this is the original minutes of the meeting of the stockholders of the Blue Goose Mining Company of August 1st, 1910, in your custody?

(Testimony of L. Stevenson.)

A. It was in the book when I got it, so it must be.

Mr. COCHRAN.—I offer for evidence the minutes of the meeting of 1910 of the stockholders.

Mr. ORTON.—No objection. I have no objection to their substituting copies.

Said minutes were received in evidence and marked Defendant's Exhibit "C" and are as follows:

**Defendant's Exhibit "C"—Minutes of Meeting of
Stockholders of Blue Goose M. Co., August 1,
1910.**

**"MINUTES OF A MEETING OF THE STOCK-
HOLDERS OF THE BLUE GOOSE MIN-
ING COMPANY.**

Nome, Alaska, August 1st, 1910.

The stockholders of the Blue Goose Mining Company met on the 1st day of August, 1910, at the offices of the said company in the Nome Bank & Trust Company building in Nome, Alaska, the said date being the date for the regular annual meeting of the said stockholders. [148]

There were present at said meeting:

Jafet Lindeberg owning 156,656 shares of stock;

Albert Fink owning 12,500 shares of stock;

Thos. R. White owning 5 shares of stock.

And thereupon, upon motion duly made and unanimously carried, the said meeting was adjourned until 8 o'clock P. M., August 2d, 1910, and from day to day thereafter until 8:30 o'clock P. M. Sept. 23d, 1910.

THOS. R. WHITE,
Secretary."

Mr. COCHRAN.—We next offer in evidence from the original minute-book of the defendant, the minutes of the meeting of the stockholders held on September 23d, 1910.

Mr. ORTON.—No objection.

Said minutes being received in evidence and marked Defendant's Exhibit "D," and are as follows:

Defendant's Exhibit "D"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 23, 1910.

"MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, September 23d, 1910.

A meeting of the stockholders of the Blue Goose Mining Company was held in the offices of Albert Fink, Esq., in Nome, Alaska, at 8:30 o'clock P. M., Sept. 23d, 1910, pursuant to the last adjournment.

Upon a roll-call being had, the following named persons, stockholders in said company, and owning the number of shares of stock set opposite their respective names, were [149] found to be present, to wit:

Jafet Lindeberg, 156,656 shares;

Albert Fink, 12,500 shares;

G. J. Lomen, 10 shares;

Guy W. Campbell, 10 shares;

Thos. R. White, 5 shares;

J. J. Cole, 18,750 $\frac{2}{3}$ shares.

Upon motion duly made, seconded and unani-

mously carried, the election of a board of directors for the ensuing year was declared to be the first order of business, it appearing that a majority of the shares of stock outstanding were represented.

Whereupon, Albert Fink tendered his resignation as vice-president and director of the company, which was, upon motion duly made and carried, accepted.

Thereupon, upon motion duly made, seconded and unanimously carried, a board of directors consisting of the following, to wit, Jafet Lindeberg, Guy W. Campbell, G. J. Lomen, J. J. Cole and Thos. R. White, was elected for the ensuing year:

Whereupon, the said directors took and subscribed the following oath:

United States of America,
District of Alaska,—ss.

Jafet Lindeberg, J. J. Cole, Guy W. Campbell, G. J. Lomen and Thos. R. White, being each duly sworn, deposes and says: each for himself and not one for the other; [150] that he is one of the persons elected a director at the regular annual meeting of the stockholders of the Blue Goose Mining Company, and that he will well and faithfully perform the duties of director of said company and of such office as he may be elected to therein.

JAFET LINDEBERG.

J. J. COLE.

G. J. LOMEN.

THOS. R. WHITE.

G. W. CAMPBELL.

Subscribed in my presence and sworn to before me this 23d day of September, 1910.

O. D. COCHRAN,

Notary Public in and for the District of Alaska.

Whereupon, there being no further business to come before the meeting, it was on motion duly made, seconded and carried, adjourned.

[Notarial Seal]

THOS. R. WHITE,
Secretary."

Mr. COCHRAN.—I next offer in evidence minutes of the meeting of the board of directors of the Blue Goose Mining Company of September 23d, 1910.

Said minutes being received in evidence and marked Defendant's Exhibit "E," and are as follows: [151]

Defendant's Exhibit "E"—Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 23, 1910.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE BLUE GOOSE MINING CO.

Nome, Alaska, September 23d, 1910.

Immediately upon the adjournment of the stockholders' meeting heretofore held on the 23d day of September, 1910, the board of directors elected at said stockholders' meeting met in the offices of Albert Fink, Esq., Nome, Alaska.

There were present a full board consisting of, Jafet Lindeberg, J. J. Cole, Guy W. Campbell, G. J. Lomen, Thos. R. White, and the following proceedings were had:

Mr. Lindeberg was nominated by Mr. Campbell to hold the office of president of the company for the ensuing year. There being no further nominations, on motion duly made and unanimously carried, Mr. Jafet Lindeberg was elected president of the Blue Goose Mining Company for the ensuing year, to have all of the powers of such officer and such other powers as have heretofore by the board of directors of said company been given him.

Mr. White was nominated by Mr. Lomen to hold the office of secretary of the company for the ensuing year. There being no further nominations, on motion duly made, seconded and unanimously carried, Mr. Thos. R. White was elected secretary of the Blue Goose Mining Company for the ensuing year.

Mr. Campbell was nominated by Mr. White for the [152] office of treasurer of the company for the ensuing year. There being no further nominations, on motion duly made, seconded and carried, Mr. Guy W. Campbell was elected treasurer of the Blue Goose Mining Company for the ensuing year.

On motion duly made, seconded and unanimously carried the Miners & Merchants Bank of Alaska was made the depositary of the funds of the company.

WHEREUPON, there being no further business to come before the meeting, it was on motion duly made and carried, adjourned.

THOS. R. WHITE,
Secretary."

Mr. COCHRAN.—I next offer in evidence the minutes of the meeting of the stockholders of the Blue Goose Mining Company of August 7th, 1911.

Said minutes being received in evidence and marked Defendant's Exhibit "F," and are as follows:

Defendant's Exhibit "F"—Minutes of Meeting of Stockholders of Blue Goose M. Co., March 7, 1911.

"MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, August 7th, 1911.

The stockholders of the Blue Goose Mining Company met on the 7th day of August, 1911, at two o'clock of that day, at the office of G. J. Lomen in Nome, Alaska, the said date being the date of the regular annual meeting of said [153] stockholders:

There was present at said meeting:

Jafet Lindeberg owning 156,656 shares of stock;

G. J. Lomen owning 10 shares of stock;

J. J. Cole owning 18,750 $\frac{2}{3}$ shares of stock.

And thereupon, upon motion duly made and carried, the said meeting was adjourned until the 8th day of August, 1911, at four o'clock P. M., and from day to day thereafter until September 27th, 1911, at four o'clock P. M. at the office of the Pioneer Mining Company in Nome, Alaska.

G. J. LOMEN,
Acting Secretary."

Mr. COCHRAN.—I next offer in evidence the minutes of the meeting of the stockholders of the Blue Goose Mining Company of September 27th, 1911.

Said minutes being received in evidence and marked Defendant's Exhibit "G," and are as follows:

Defendant's Exhibit "G"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 27, 1911.

"MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, September 27th, 1911.

A meeting of the stockholders of the Blue Goose Mining Company was held at the offices of the Pioneer Mining Company, in Nome, Alaska, at four o'clock P. M., September 27th, 1911, pursuant to adjourned meeting. [154]

In the absence of, and on account of the removal of Thos. R. White, Secretary, G. J. Lomen was elected secretary pro tem.

Upon roll-call being had, the following named persons, stockholders in said company and owning the number of shares of stock set opposite their respective names, were found to be present, to wit:

Jafet Lindeberg owning 156,656 shares;

G. J. Lomen owning 10 shares;

J. J. Cole owning 18,750 $\frac{2}{3}$ shares.

On motion duly made, seconded and unanimously carried, an election of the board of directors for the ensuing year was declared to be the first order of business.

Upon motion, the following board of directors was elected for the ensuing year:

J. J. COLE.

JAFET LINDEBERG.

S. STEVENSON.

G. J. LOMEN and

J. A. BACHELDER.

Whereupon the said directors took and subscribed the following oath:

District of Alaska,

Nome Precinct,—ss.

Jafet Lindeberg, J. J. Cole and L. Stevenson and J. A. Bachelder being each duly sworn deposes and says: each for himself and not one for the other, that he is one of the persons elected a director at the regular [155] annual meeting of the stockholders of the Blue Goose Mining Company, and that he will well and faithfully perform the duties of director of said company, and of such office as he may be elected to therein.

J. J. COLE.

JAFET LINDEBERG.

L. STEVENSON.

J. A. BACHELDER.

Subscribed and sworn to before me this 27th day of Sept., 1911.

G. J. LOMEN,

Notary Public, District of Alaska.

DIRECTOR'S OATH.

District of Alaska,
Nome Precinct,—ss.

G. J. Lomen being duly sworn, deposes and says: That he is one of the persons elected a director of the Blue Goose Mining Company, at the regular annual meeting of the stockholders of said company, September 27th, 1911; and that he will well and faithfully perform the duties of director of said company and of such office in said company as he may be elected to therein.

G. J. LOMEN.

Subscribed and sworn to before me this the 27th day of September, 1911.

O. D. COCHRAN, [156]

Notary Public in and for the District of Alaska.

On motion of Jafet Lindeberg, it was unanimously resolved that Section 5 of the By-laws be, and the same was amended so as to read as follows:

“Directors present at any regular or special meeting, shall receive ten dollars for each meeting attended by them, and officers such compensation as the Board of Directors shall by resolution provide.”

On motion meeting adjourned.

G. J. LOMEN,

Secretary Pro Tem.”

Mr. STEVENSON (Continuing). I never heard or knew of the case of the Northern Light Mining Company against the Blue Goose Mining Company in the Superior Court of the State of California in and for the City and County of San Francisco prior

(Testimony of L. Stevenson.)

to the 22d day of March, 1912. No mention was made of such a case in the meeting of the board of directors when I was elected a director and secretary of the company.

Q. Did the board of directors at any time since you have been secretary of the corporation authorized the employment of any attorney to represent the defendant in any action in the State Courts of the State of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, and calling for a conclusion [157] of the witness. The minutes are already in.

The COURT.—Have you any personal knowledge about that Mr. Stevenson, outside of the minutes?

A. I have not.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Have you any personal knowledge of what transpired before the board of directors outside of the minutes. Do you know outside of the minutes whether or not any matter came up in relation to the employment of counsel?

A. Nothing was brought up at our meetings except what is shown in the minutes, there was nothing orally transacted.

Q. Mr. Stevenson, during the time between the date of your election as a member of the board of directors and secretary of the defendant corporation, and the 22d day of March, 1911, did the defendant have any property within the State of California?

(Testimony of L. Stevenson.)

Mr. ORTON.—Objected to as being irrelevant, incompetent and immaterial, and not competent evidence to impeach this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. During such period did the defendant corporation have any officer or agent within the State of California who [158] was authorized to receive or accept service of process issuing out of the courts of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant, during such period, have any agent representative, or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California or in this particular action brought in the courts of the State of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. During the same period did the defendant do any business or have any business within the state of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

(Testimony of L. Stevenson.)

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I now offer to prove by the witness on the stand, that during the time between the date of his election as a member of the board of directors and secretary of the defendant [159] corporation and the 22d day of March, 1911, the defendant had no property within the State of California, nor agent or officer within the State of California authorized to receive or accept service of process issuing out of the courts of California, nor during such period had the defendant any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California or in this particular action brought in the court of the State of California, nor did the defendant during such period, do any business or have any business within the State of California.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—I have to abide by my first ruling and deny the offer.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Cross-examination.

(By Mr. ORTON.)

(Witness Continuing.) I had never been a director of the Company until I was elected at the meeting in 1911, between the time of the meeting of September 1911, up to and including the 22d day of March,

(Testimony of Jafet Lindeberg.)

1912, we had no [160] further meetings of the Board of Directors.

I own ten shares of stock. I do not know how many shares have been issued, I cannot tell, know it is less than three hundred thousand shares.

Testimony of Jafet Lindeberg, for Defendant.

JAFET LINDEBERG, a witness produced on behalf of the defendant, testified as follows:

My name is Jafet Lindeberg, I reside in Nome and have resided in Nome off and on for seventeen or eighteen years. I am president of the Blue Goose Mining Company elected by the board of directors. The president is elected annually. I have been president of the defendant company for six or seven years. I am a stockholder and own one hundred and fifty odd thousand shares of stock which I hold in trust for the Pioneer Mining Company.

I know of the case brought in the Superior Court of the State of California in and for the City and County of San Francisco, by the Northern Light Mining Company vs. the Blue Goose Mining Company, and being the case involved in this trial. I do not know of my own knowledge when the complaint was filed in that case. To my best recollection I first learned of that case in the Superior Court of California in and for the City and County of San Francisco, in the fall of 1911, after I returned from Alaska. I was not in San Francisco nor in the State of California on the 2d day of June, 1911, nor between the 2d day of June 1911, and the date of my return in the fall of 1911. I was in Seattle, [161]

(Testimony of Jafet Lindeberg.)

Washington on the 2d day of June 1911, and left there either on the afternoon of the 2d or third of June for Alaska, and remained in Nome, Alaska until late in the fall. I returned to the State of California sometime in the latter part of October or November—I think about the middle of November—I was not within the State of California between the 1st day of June and sometime in the month of November 1911.

Q. Now Mr. Lindeberg, were you served with any summons or process in this case by any officer in the State of California?

A. I don't remember that, I might have been after I returned from Alaska, but I cannot remember that—I might not have been. I have no recollection of ever having been served with any process in that case, but if I was served it would be after my return in the fall of 1911.

I was at that time president of the defendant Company and a member of its board of directors. The Blue Goose Mining Company is an Alaskan corporation.

Q. What is the character of the business in which the Blue Goose Mining Company is engaged?

Mr. ORTON.—Objected to as immaterial and not proper evidence.

Mr. COCHRAN.—The purpose is to show their business is confined to the Territory of Alaska.

The COURT.—Objection sustained. [162]

To which ruling of the Court the defendant duly excepted and an exception was allowed:

Mr. COCHRAN.—We offer to prove by the wit-

(Testimony of Jafet Lindeberg.)

ness now on the stand, that the defendant was engaged in mining exclusively in the Territory of Alaska.

Mr. ORTON.—The proof is objected to as incompetent to overcome this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Was the defendant engaged in any business outside of the Territory of Alaska in the year 1911, or prior thereto?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Was the defendant engaged in any business of any character in the State of California during the year 1911 or prior thereto?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—We offer to prove by the witness [163] on the stand that the defendant during the year 1911, or prior thereto, did not have any office outside of the District of Alaska, and had no business of any kind within the State of California.

Mr. ORTON.—Objected to as incompetent to impeach this judgment.

The COURT.—Objection sustained.

(Testimony of Jafet Lindeberg.)

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Prior to the 2d day of March, or the date of the rendition of the judgment in the case at bar in the State of California, did the defendant have any office within the State of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I now offer to prove by the witness on the stand that prior to the 22d day of March, 1911, the defendant had no office within the State of California.

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Now, did the defendant, prior to the date of the entry of this judgment, as alleged, in the State courts of California, or at all, own any property within the [164] *the* State of California.

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant corporation have any officer or agent within the State of California prior to the date of the rendition of the alleged judgment herein sued upon, in the State courts of California upon whom service of process was authorized to be had by the company?

(Testimony of Jafet Lindeberg.)

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant prior to the rendition of the judgment herein sued upon in the State courts of California have any officer or agent within the State of California authorized to do any business on behalf of the defendant in such State?

Mr. ORTON.—Same objection,

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant prior to the rendition of the judgment herein sued upon the State courts of California, have any officer or agent authorized by [165] the corporation to employ counsel or to employ counsel to represent the defendant in any actions brought in the State courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

WITNESS (Continuing.) I verified the answer filed in this case in the State courts of California, at the request of Mr. Fink, who was one of the stockholders of the company, associated with the lawsuit in California.

Q. Had you any authority from the board of directors of the corporation to appear, defend, or an-

(Testimony of Jafet Lindeberg.)

swer in that cause brought in the State courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial and not a question of fact, but one of law and incompetent to overcome this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Had you any authority from the defendant as president or otherwise, to appear in the action brought by the plaintiff herein in the State courts of California, or to employ counsel therein to defend such action?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial and his action in doing so cannot [166] be defeated by subsequent denial of authority and incompetent to impeach this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did anyone, to your knowledge, have any authority on behalf of the company, defendant herein, to appear for the defendant in any actions brought against it in the State courts of California?

Mr. ORTON.—Objected to as incompetent to overcome this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

(Testimony of Jafet Lindeberg.)

Cross-examination.

(By Mr. ORTON.)

I was elected president of the company in 1910. I don't remember whether I was elected in 1909 or not. I was president of the company when I arrived in San Francisco in the fall of 1911.

I learned of this case shortly after my arrival in San Francisco. I hold one hundred and fifty-odd thousand shares of stock as trustee of the Pioneer Mining Company.

Redirect Examination.

(By Mr. COCHRAN.)

I employed Messrs. Fink and White to appear in the [167] case in question in the courts of California and to represent the company therein. I was in San Francisco, California, when I employed them. I employed them after my arrival in San Francisco and after the month of November, somewhere around there, possibly not before the 1st of the year 1912. I don't remember exactly, but I do know it was after the month of October.

Q. What authority from the company did you have to do so?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

Q. Had you any authority to employ counsel in that case to appear and represent the company or to appear and represent the company therein other

(Testimony of Jafet Lindeberg.)

than your general authority as president of the company? A. None.

Q. Did the defendant ever file any copy of its Articles of Incorporation in the State of California or file any documents or papers with any of the officers of said State? A. No, sir.

Q. Mr. ORTON.—That is objected to as entirely immaterial.

The COURT.—Strike the answer out, objection sustained. [168]

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant ever comply with, or attempt to comply with the laws of California as to foreign corporations doing business in that State?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant ever pay or cause to be paid any license fee or fees in the State of California?

Mr. ORTON.—Objected to as immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—Now, I offer to prove by the witness on the stand, as president of the company, that the defendant never filed any copy of its articles of incorporation in the State of California, or filed any documents or papers with any of the officers of such State, and never complied with, or attempted

(Testimony of Jafet Lindeberg.)

to comply with, the laws of California as to foreign corporations doing business in the State, nor ever paid any license fee or fees to the State of California, and that the defendant never had any office in the State of California, or did any business in the State of California.

Mr. ORTON.—Same objection; it is immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant [169] duly excepted, and an exception was allowed.

Recross-examination.

By Mr. ORTON.—I employed Messrs. Fink and White after October, 1911, or the first of January, 1912. Mr. Fink informed me that there was litigation pending between the Northern Light Mining Company and the Blue Goose Mining Company, Mr. Fink being one of the stockholders of the company.

Q. That was before you verified the answer that you employed them?

A. Just about that time, I think, but I had no occasion to talk about it prior.

Q. And you paid them, did you?

A. I have paid them, yes, sir.

Q. Out of your own funds, or the Blue Goose Mining Company's funds?

A. I think I paid them out of the Pioneer Mining Company's funds to begin with.

Q. And charged it up to the Blue Goose Mining Company, of course? A. I think so, yes, sir.

Q. So the Blue Goose Mining Company really paid

(Testimony of Jafet Lindeberg.)

counsel? A. I think so, yes, sir.

Q. A thousand dollars at one time?

A. I believe that was charged to the Blue Goose Mining [170] Company either in 1914 or 1915, if I remember right.

Q. Well, a thousand dollars at one time you paid them? A. I think that was the fee.

Q. The Pioneer Mining Company paid it of which you were the chief officer, and you afterwards charged it to the Blue Goose Mining Company?

A. I think that was the way it was done. The books will show it.

Testimony of Ira D. Orton, for Defendant.

IRA D. ORTON, a witness produced for and on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. LOMEN.)—Mr. Orton, you have already testified in this case that you practiced law in the State of California?

A. I believe so, yes, sir.

Q. I will ask you whether, in the year 1911, it was the law in the State of California that a summons may be issued upon the complaint at any time within a year after it is filed; the summons must be served upon each defendant within the State by delivering to him a copy thereof, together with a copy of the complaint. Service upon a foreign corporation doing business within that State may be made upon its managing agent within the State. If the defendant

(Testimony of Ira D. Orton.)

is a nonresident or has departed from the State or conceals himself to avoid service or cannot be found within the State, or is a foreign corporation having no officer or agent within the State [171] upon whom service can be made, service may be made upon such defendant by publication of the summons in a newspaper, and if the residence of such defendant is known, mailing him a copy of the summons and complaint; such service may be made upon an order of the court or judge, and publication, if against a nonresident defendant, must be at least once a week for two weeks. Service is completed at the expiration of the time fixed for publication. When publication has been ordered, personal service out of the State is equivalent to publication. The defendant is required to appear and answer the complaint within ten days after service, if served within the county where the action is brought. In all other cases within thirty days. Unless summons is issued within a year and served, and return made within three years after the commencement of the action, or defendant appears, the action must be dismissed. Is that the law, and was it, during the year 1911?

A. I have no reason to doubt that that was the law at that time. I wasn't very familiar with it at that time and had no occasion to look it up recently.

Thereupon the testimony was closed. [172]

AND THEREUPON the Court, at the request of the plaintiff, instructed the jury as follows:

*“In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Instruction to Jury.

The jury are instructed to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 2d day of March, 1912, at the rate of 7% per annum, amounting in the aggregate to the sum of \$14,189.00.

J. R. TUCKER,

District Judge.

Nome, Alaska, July 18, 1916.”

To the giving of which instruction by the Court the defendant in open court and in the presence of the jury and before the [173] jury retired, duly excepted and an exception was allowed, by the Court.

And thereupon the jury in accordance with the instruction of the Court, rendered a verdict in writing and signed by their foreman as follows:

*“In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find a verdict in favor of the plaintiff and against the defendant for the sum of \$15,189.

Dated at Nome, Alaska, July 18th, 1916.

W. E. BARTHOLOMUE,

Foreman.”

WHEREUPON said verdict was filed and the jury discharged. [174]

The foregoing constitutes all the testimony and all the proceedings given and had upon the trial of the above-entitled cause.

The defendant presents the foregoing as its Bill of Exceptions in this case, and prays that the same may be settled and allowed, signed and certified by the Court as allowed by law.

G. J. LOMEN,

O. D. COCHRAN,

Attorneys for Defendant.

Receipt of a copy of the foregoing Bill of Exceptions is admitted this 28th day of September, 1916.

IRA D. ORTON,

Of Attorneys for Plaintiff. [175]

Order Settling Bill of Exceptions.

The foregoing Bill of Exceptions have been certified, filed and presented for settlement within the time allowed by law and extensions thereof made by orders entered of record herein, and said Bill of Exceptions being now found to be full, true and correct is now hereby SETTLED and ALLOWED.

Done at Nome, Alaska, the 4th day of October, 1916.

J. R. TUCKER,

Judge of the District Court for the District of Alaska, Second Division. [176]

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Min. Co., Plaintiff, vs. Blue Goose Min. Co., Defendant. Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 4, 1916. G. A. Adams, Clerk. By W. McG., Deputy. G. J. Lomen, O. D. Cochran, Attorney for Deft. [177]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

Assignment of Errors.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Comes now the defendant Blue Goose Mining Company, a corporation, and assigns the following errors as having been committed by the Court upon the trial and in the proceedings had in the above-entitled action, upon which said defendant does and will rely upon its Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit.

1.

The Court erred in overruling the objection of the defendant to the introduction in evidence at the trial of said cause, of the exemplified copy of Sections 1, 4, and 5 of article 6 of the Constitution of the State of California, and section 1920 of the Civil Code of the State of California, said exemplified copies being marked Plaintiff's Exhibit 2 and set forth in full in the Bill of Exceptions filed herein, the certificate to said copies of sections 1, 4, and 5 of [178] of the article 6 of the Constitution of the State of Cali-

formia and section 1920 of the Civil Code of the State of California, being as follows:

“STATE OF CALIFORNIA—DEPARTMENT
OF STATE.

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copies of sections 1, 4, and 5 of article VI of the Constitution of the State of California, and section 1920 of the Civil Code of said State, now in full force and effect, with the originals on file in my office, and that the same are correct transcripts therefrom, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 15th day of September, A. D. 1915.

FRANK C. JORDAN,
Secretary of State.

By _____,
Deputy.

[Great Seal of the
State of California.]
[Canceled I. R. S. Ten Cents.]

2.

The Court erred in overruling the motion of [179] the defendant to be permitted to offer evidence preliminary to the acceptance of the Judgment-roll introduced in evidence by the plaintiff showing want of jurisdiction in the court of California over the defendant.

3.

The Court erred in overruling the objection of the defendant to the introduction in evidence at the trial of said cause of the exemplified copy of the Judgment-roll and Remittitur of the Superior Court of the State of California, City and County of San Francisco, in the case of Northern Light Mining Company, a corporation plaintiff, vs. Blue Goose Mining Company, a corporation, defendant, marked Plaintiff's Exhibit No. 3, and set forth in full in the Bill of Exceptions filed herein.

4.

The Court erred in admitting in evidence over the objections of the defendant, exemplified copy of notice of appeal and exemplified copy of notice of appeal from order denying a new trial, being respectively Plaintiff's Exhibits No. 4 and No. 5; said exhibits being set out in full in the Bill of Exceptions filed herein.

5.

The Court erred in admitting in evidence over the objections of the defendant, the copy of the order of the Supreme Court of the State of California, transferring the case to the District Court of Appeal for hearing, being Plaintiff's Exhibit No. 6 set forth in full in the Bill [180] of Exceptions filed herein.

6.

The Court erred in admitting in evidence over the objection of the defendant, exemplified copy of Order Confirming Judgment, being Plaintiff's Exhibit No. 7, set forth in full in the Bill of Exceptions filed herein.

7.

The Court erred in sustaining the objection of the plaintiff to the following question asked on cross-examination of the witness Ira D. Orton:

Q. Now, as far as services upon a foreign corporation is concerned, upon whom can process be served under the Statutes of California?

8.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. State to the Court whether or not their (Meaning the Blue Goose Mining Company) business is exclusively in the Territory of Alaska.

9.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. Mr. Bachelder, is the defendant corporation engaged in any business in the State of California? [181]

10.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. Were they (meaning the Blue Goose Mining Company) engaged in any business in the State of California, or did they have any office in the State of California in the year 1911?

11.

The Court erred in denying the offer of the de-

fendant to prove by the witness J. A. Bachelder to the effect that the defendant was not engaged in business in the State of California during the year 1911, and had no office of any character in the State of California.

12.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. A. Bachelder:

Q. Did they (meaning Fink and White, lawyers of San Francisco, California) represent or have authority to represent the Blue Goose Mining Company during the year 1911, or at all?

13.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. A. Bachelder:

Q. Mr. Bachelder, did the defendant corporation [182] at any time in the year 1911, or since that date, or at all, have any property within the State of California?

14.

The Court erred in ruling out the testimony of the witness J. J. Cole to the effect that the defendant had no business elsewhere than in the Territory of Alaska.

15.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Now, did the Blue Goose Mining Company, the defendant herein, have any business of any

kind in the State of California, prior or subsequent to the 2d day of June, 1911?

16.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Mr. Cole, on the 2d day of June, 1911, or prior or subsequent thereto, did the defendant corporation own any property or have any office within the State of California, or elsewhere, other than within the Territory of Alaska?

17.

The Court erred in denying the offer of the [183] defendant to prove by the witness J. J. Cole that the defendant corporation did not prior or subsequent to the 2d day of June, 1911, have any property within the State of California, nor did it upon or prior or subsequent to such date, have any office within or perform any business within the State of California.

18.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Did the directors of the Blue Goose Mining Company employ or authorize Messrs. Fink and White, or either of them, to appear as attorneys for them in any litigation in the State of California?

19.

The Court erred in sustaining the objection of the plaintiff to the introduction in evidence of the By-Laws of the defendant corporation, the same being

marked Defendant's Exhibit "B," for identification, and which are as follows:

BY-LAWS OF THE BLUE GOOSE MINING COMPANY.

ARTICLE I.

Seal and Place of Business.

Section 1. The corporate seal of this corporation [184] until such time as a proper seal can be secured, shall be as follows:

Section 2. Until changed by the directors, the general office of this corporation shall be at the law offices of Albert Fink, in Nome, Alaska, but the directors may at any regular or special meeting change the place of such office.

ARTICLE II.

Capital Stock.

Section 1. All certificates of stock shall be signed by the president and secretary of this corporation, and sealed with the corporate seal.

Section 2. The directors may provide for the registration of all stock by some bank or trust company.

Section 3. Shares of capital stock may be transferred on indorsement of the certificate, and its surrender to the secretary for cancellation, whereupon the stock shall be transferred upon the books of the corporation, and the transferee shall be entitled to have a new certificate issued to him. The board of directors may by resolution forbid the transfer of stock on the books of the corporation for a space of time, not exceeding thirty days, immediately before

a meeting of the stockholders, or immediately before the payment of a dividend. [185]

Section 4. In case of loss or destruction of a certificate of the capital stock, the owner shall not be entitled to receive a new certificate in lieu thereof until a lapse of sixty days, after written notice, of such loss or destruction has been served on the secretary, and then only on making satisfactory proof of such loss or destruction, and on giving the corporation ample indemnity, by bond or otherwise, as the directors may prescribe. Any new certificate issued under such circumstances shall have plainly marked "Duplicate," on the face thereof.

Section 5. In case of the death of a stockholder a new certificate may be issued to his personal representative on surrender of the old certificate, and on filing with the secretary a duly certified copy of the letters testamentary or of administration.

ARTICLE III.

Stockholders' Meetings.

Section 1. The regular annual meeting of the stockholders of this corporation shall be held at the general offices of the corporation on the first Monday in August of each year, at the hour of 2 o'clock P. M., and said meeting may be adjourned from day to day, until its business is completed.

Section 2. Special meetings of the stockholders may be called by a majority of the directors at such times [186] and places as may be selected; and the directors shall call a meeting of the stockholders after a written request so to do signed by the owners of a majority of the outstanding stock of the corpo-

ration. Such special meeting shall be called at the same place and the same hour as the regular meetings.

Section 3. Whenever a special meeting of the stockholders is called, the secretary shall mail to each of the stockholders, at his last-known address, a written or printed notice of the time and place of holding such special meeting; said notice shall be mailed at least thirty days before the day of the meeting.

Section 4. At all meetings of the stockholders each stockholder shall be entitled to cast one vote for each share of stock held by him, and such votes may be cast in person or by proxy. All proxies shall be in writing, signed by the stockholder and acknowledged like a conveyance of land.

Section 5. At any stockholders' meeting a majority of the stock issued must be represented in order to constitute a quorum for the transaction of business; but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to some other day.

Section 6. The president and secretary of the corporation shall act as the president and secretary, respectively, at each stockholders' meeting, and the directors of the corporation, or a committee appointed by them from their own number, shall pass on the authenticity of proxies. [187]

ARTICLE IV.

Directors.

Section 1. The affairs of this corporation shall be managed by a board of five directors, who shall be stockholders, and who shall be elected by the stock-

holders at the regular annual meeting, and who shall hold office for one year, and until their successors are elected and qualified.

Section 2. The directors shall elect all the other officers of the corporation. Such election shall be held annually, as soon as possible after the annual stockholders' meeting. All the officers of the corporation shall hold office during the pleasure of the board of directors, but no officer once regularly elected by the board of directors shall be removed from office except by a full board.

Section 3. Vacancies in the offices of the corporation or in the board of directors may be filled by election by the remaining members of the board of directors, at any regular or special meeting of the board.

Section 4. A transfer by a director of all his stock in the corporation shall operate as a resignation of his office.

Section 5. Directors shall not receive any salary or compensation for their services as directors, but a director who is also an officer of the corporation, may, by resolution of the board, receive compensation for his services [188] as such officer.

Section 6. Regular meetings of the board of directors shall be held annually after the adjournment of each regular annual meeting of the stockholders.

Section 7. Special meetings of the board of directors may be called at any time by the president, or by any two directors, by personal notice to each director, who may be found in Nome, Alaska.

Section 8. At any regular or special meeting of

the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, but a smaller number may adjourn the meeting to some other day.

ARTICLE V.

Officers.

Section 1. The officers of this corporation shall be a president, vice-president, secretary, treasurer, and general counsel. They shall be elected by the directors as soon as practicable after each election of directors, and shall hold office during the pleasure of the board, and until their successors are elected and qualified.

Section 2. Only directors shall be eligible to the offices of president and vice-president. A president or vice-president who ceases to be a director shall cease to hold office as president or vice-president as soon as his successor is elected. Any and all of the offices of said corporation may be held by the same person at the same time, with the exception of the offices of president and vice-president. [189]

Section 5. The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and stockholders, shall prepare and present at each annual stockholders' meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all of the duties usually appertaining to the offices of president of a corporation. He shall have general charge (subject to the control

of the board of directors) of the business affairs of the corporation, may sign and indorse bonds, bills, checks and promissory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power without the previous consent of the board of directors to incur any debt on behalf of the corporation in excess of the sum of Five Hundred Dollars, or without such consent to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the directors advised as to the affairs of the corporation.

Section 4. The vice-president shall preside at any meetings of the stockholders and of the directors from which the president may be absent, and he may perform any of the other duties of the president during the absence of the latter, whenever directed to do so by vote of the board of directors.

Section 5. The secretary shall keep the minutes [190] of all stockholders' and directors' meetings, shall keep the stock register and stock transfer-book, and shall be custodian of the corporate seal, and of all records, papers, files and books of the corporation. He shall affix the corporate seal to all documents to which it should be attached, and attest the same by his signature, and shall perform generally all the duties usually appertaining to the office of secretary of a corporation.

Section 6. The treasurer shall have custody of all the money and funds of the corporation, shall keep all the money and funds of the corporation, shall keep its books of account, and shall countersign all

checks of the corporation. He shall deposit the funds of the corporation in some bank or banks to be selected by him with the approval of the board of directors, in the name of the corporation. Whenever requested to do so he shall give bond to the corporation in any amount to be fixed by the board of directors, and with sureties to be approved by them. He shall at all times keep the directors fully informed as to the financial condition of the corporation, and he shall prepare and present at each annual stockholders' meeting a report showing the receipts and disbursements of the preceding year, and the present financial condition of the corporation. He shall be the general financial officer of the corporation, and shall perform all the duties usually appertaining to the office of treasurer of a corporation.

Section 7. The general counsel shall be the legal adviser of the corporation, and shall perform such [191] services and receive such compensation as may be determined by the board of directors.

ARTICLE VI.

Amendments.

Section 1. These By-laws or any of them may be altered, amended, added to, or repealed at any regular or special meeting of a full board of directors.

BE IT RESOLVED by the board of directors of the Blue Goose Mining Company, that the foregoing by-laws shall be and are hereby adopted, as the by-laws of the Blue Goose Mining Company.

IN WITNESS WHEREOF, we the undersigned directors and owners of all outstanding stock of said corporation, have hereunto set our hands this 23d day of August A. D. 1904.

[Endorsed]: #172. N. L. M. Co. vs. B. G. M. Co.
Deft's Ex. B. for Identification. July 17, 1916. G.
A. Adams, Clerk, Dis. Court. [192]

20.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Were they (meaning Fink and White) at that time, that is at any time before or between the 2d day of June, 1911, and the 22d day of March, 1912, attorneys or representatives of the Blue Goose Mining Company?

21.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. I will put it in a different form: Since you have been a member of the board of directors did the board of directors authorize the employment at any time of Messrs. Fink and White or other counsel to represent the defendant or appear for the defendant in the case in question?

22.

The Court erred in sustaining the objection of the

plaintiff to the following question asked of the witness G. J. Lomen:

Q. Did the board of directors, meeting as a board of directors, at any meeting authorize the employment of Messrs. Fink and White or other counsel to represent or appear for the [193] corporation in the action in question in the State Courts of California?

23.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Now state whether or not the defendant corporation has, since you have been a director of that corporation up to the 22d day of March, the date of the entry of this Judgment, own any property within the State of California?

24.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Since you have been a director of the corporation state, if you know, whether or not the defendant corporation has, or did it do any business within the State of California prior to the 22d day of March, 1912?

25.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen: [194]

Q. Did the defendant corporation authorize Messrs. Fink and White to appear or repre-

sent the defendant in the action in the State Courts of California so far as you know as a director of the corporation?

26.

The Court erred in denying the offer of the defendant to prove by the witness G. J. Lomen, that he, the said G. J. Lomen, had knowledge of all the acts of the board of directors since the year 1909; that the board of directors at no time authorized the appearance of Fink and White for the defendant in the action in question in the State Courts of California, or to represent the defendant in such action.

27.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Just state what your duties were as counsel for the corporation with relation to litigation of the corporation.

28.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. State whether or not there was during the year 1911, or 1912, any agent or representative of the defendant resident of the State of California who had authority from the board of directors to [195] accept service of process in the State of California issuing from the courts of that State; or who had authority from the board of directors to appear, represent or defend any actions brought against the defendant

in the courts of said State of California, or who had authority from the board of directors of the corporation to employ any one to appear, represent or defend actions brought against the defendant within the State of California in the State Courts of California.

29.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Did the board of directors at any time since you have been secretary of the corporation, authorize the employment of any attorney to represent the defendant in any action in the State Courts of California?

30.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Mr. Stevenson during the time between the date of your election as a member of the board of directors and secretary of the defendant [196] corporation, and the 22d day of March, 1911, did the defendant have any property within the State of California?

31.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. During such period (meaning between the date of the election of the witness a member of the board of directors of the defendant company

and the 22d day of March, 1911) did the defendant corporation have any officer or agent within the State of California who was authorized to receive or accept service of process issuing out of the courts of California?

32.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Did the defendant during such period (meaning the period between the date of the election of such witness a member of the board of directors and the 22d day of March, 1911) have any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in an action brought in the courts of the State of California, or in this particular action brought in the [197] State courts of California.

33.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. During the same period (meaning the period between the election of the witness a member of the board of directors of the defendant and the 22d day of March, 1911), did the defendant do any business within the State of California.

34.

The Court erred in denying the offer of the defend-

ant to prove by the witness L. Stevenson that during the time between the date of his election as a member of the board of directors and secretary of the defendant corporation, and the 22d day of March, 1911, the defendant had no property within the State of California, nor agent nor officer within the State of California authorized to receive or accept service of process issuing out of the courts of California; nor during such period did the defendant have any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California, or in this particular action brought in the courts of California, nor did the defendant, during such period, do any business or have any business within the State of California.

[198]

35.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. What is the character of the business in which the Blue Goose Mining Company is engaged?

36.

The Court erred in denying the defendant's offer to prove by the witness Jafet Lindeberg that the defendant was engaged in mining exclusively in the Territory of Alaska.

37.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Was the defendant engaged in any business outside of the District of Alaska in the year 1911, or prior thereto?

38.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Was the defendant engaged in any business of any character in the State of California during the year 1911, or prior thereto?

39.

The Court erred in refusing the offer of the defendant to prove by the witness Jafet Lindeberg that the defendant, [199] during the year 1911, or prior thereto, had no officer outside of the Territory of Alaska, or did any business of any character within the State of California.

40.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Prior to the 2d day of March, or the date of the rendition of the judgment in the case at bar in the State Courts of California, did the defendant have any officer within the State of California?

41.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Now, did the defendant, prior to the date of the entry of this judgment, as alleged in the

State courts of the State of California, or at all, own any property within the State of California?

42.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant corporation have any officer or agent within the State of California prior to [200] the date of the rendition of the alleged judgment herein sued upon, in the State Courts of California upon whom service of process was authorized to be had by the company?

43.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg.

Q. Did the defendant, prior to the rendition of the judgment herein sued upon in the State Courts of California, have any officer or agent within the State of California authorized to do any business on behalf of the defendant in such State?

44.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant, prior to the rendition of the judgment herein sued upon in the State Courts of California, have any officer or agent authorized by the corporation to employ coun-

sel to represent the defendant in any actions brought in the State Courts of California?

45.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg: [201]

Q. Had you any authority from the board of directors of the corporation to appear, defend or answer in that cause (meaning the cause of Northern Light Mining Company vs. Blue Goose Mining Company) brought in the State Courts of California?

46.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Had you any authority from the defendant as president or otherwise, to appear in the action brought by the plaintiff herein in the State courts of California, or to employ counsel therein to defend such action?

47.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did anyone, to your knowledge, have any authority on behalf of the company, defendant herein, to appear for the defendant in any actions brought against it in the State courts of California?

48.

The Court erred in sustaining the objection of the

plaintiff to the following question asked of the witness Jafet Lindeberg: [202]

Q. What authority from the company did you have to do so (meaning to employ Messrs Fink and White to appear and represent the Company in the case of Northern Light Mining Company vs. Blue Goose Mining Company in the State courts of California).

49.

The Court erred in striking out the evidence of the witness Jafet Lindeberg to the effect that the defendant never filed any copy of its Articles of Incorporation in the State of California, or filed any documents or papers with any of the officers of such State.

50.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant ever comply with or attempt to comply with the laws of California as to foreign corporations doing business in that State?

51.

The Court erred in denying the offer of the defendant to prove by the witness Jafet Lindeberg, that the defendant never filed any copy of its articles of incorporation in the State of California or filed any documents or papers with any of the officers of such State, and never complied with or attempted to comply with the laws of [203] California with relation to foreign corporations doing business in

that State, nor ever had any license of, or office in the State of California, that the defendant never had any office in the State of California nor did any business in the State of California.

52.

The Court erred in instructing the jury "to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 2d day of March, 1912, at the rate of seven per cent per annum, amounting in the aggregate to the sum of \$14,189.00."

WHEREFORE the said defendant prays that said judgment may be reversed.

O. D. COCHRAN,
G. J. LOMEN,
Attorneys for Defendant.

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 4, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendant. [204]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

The Blue Goose Mining Company, a corporation, defendant in the above-entitled cause, feeling itself aggrieved by the verdict of the jury and the judgment entered upon said verdict in the above-entitled court, on the 5th day of August, 1916, comes now by the undersigned, its attorneys, and petitions said Court for an order allowing said defendant to prosecute a Writ of Error to the Honorable United States Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided. And that also an order be made fixing the amount of security which said defendant shall give and furnish upon said Writ of Error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until [205] the termination of such Writ of Error by the said United States Court

of Appeals for the Ninth Circuit.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendant.

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., Defendant. Petition for Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Oct. 4, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendant. [206]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Order Allowing Writ of Error.

Now, on the 4th day of October, 1916, it is ordered that a Writ of Error be allowed as prayed for in the petition for writ of error heretofore filed by the above-named defendant in this cause, and that the defendant give a bond in the sum of Twenty Thou-

sand Dollars, which will operate as a supersedeas.

Done at Nome, Alaska, the 4th day of October, 1916.

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Order Allowing Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 4, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendant. [207]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, Blue Goose Mining Company, a corpora-
tion, as principal, and Jafet Lindeberg, and G. P.
Goggin, as sureties, are held and firmly bound unto

the Northern Light Mining Company, a corporation, plaintiff in the above-entitled action, in the sum of Twenty Thousand Dollars, for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals, and dated this 4th day of October, 1916.

WHEREAS, lately at a session of the above-entitled court in an action pending in said court between Northern Light Mining Company, a corporation, plaintiff, and Blue Goose Mining Company, a corporation, defendant, a judgment [208] was on the 5th day of August, 1915, rendered and entered in favor of said plaintiff and against the said defendant, and said defendant having obtained from the said District Court an order allowing a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to review said judgment, and a citation to said Northern Light Mining Company, the said plaintiff, is about to be issued citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California.

NOW, THEREFORE, the condition of the above obligation is such that if the said Blue Goose Mining Company, the defendant, shall prosecute its said writ of error to effect and answer all damages and costs, if they fail to make their plea good, then this obliga-

tion shall be void, otherwise to remain in full force and effect.

BLUE GOOSE MINING COMPANY,

By JAFET LINDEBERG,

President,

Principal.

G. P. GOGGIN,

JAFET LINDEBERG,

Sureties. [209]

United States of America,

Territory of Alaska,—ss.

Jafet Lindeberg and G. P. Goggin, being duly sworn, *doth* depose and say:

THAT he is one of the sureties named in the foregoing bond; that he is worth the sum of Ten Thousand Dollars, over and above all his just debts and liabilities, and exclusive of property exempt from execution.

JAFET LINDEBERG.

G. P. GOGGIN.

Subscribed and sworn to before me this the 4th day of October, 1916.

G. J. LOMEN,

Notary Public in and for the Territory of Alaska.

(My commission expires on the 27th day of June, 1917.)

The foregoing bond and the sureties therein are hereby approved this 4th day of Oct., 1916.

J. R. TUCKER,

District Judge. [210]

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern

Light Mining Co., a corporation, Plaintiff, vs. Blue Goose Mining Co., a corporation, Defendant. Bond on Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorney for Defendant. [211]

*In the District Court for the District of Alaska,
Second Division.*

No. 2616.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 211, both inclusive, are a true and exact transcript of the Complaint, Amended Answer, Reply, Instructions to Jury, Verdict, Judgment, Bill of Exceptions, Assignment of Error, Petition for writ of error, order thereon, bond, in the case of Northern Light Mining Company, a corporation, plaintiff vs. Blue Goose Mining Company, a corporation, defendant, No. 2616 this Court, and of the whole thereof, as

appears from the records and files in my office at Nome, Alaska and further certify that the original Writ of Error, original Citation and Order enlarging time to file and docket transcript on writ of error in above-entitled cause are attached to this transcript.

Cost of transcript \$89.45, paid by G. J. Lomen, of attorneys for defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 3d day of November, A. D. 1916.

[Seal]

G. A. ADAMS,
Clerk. [212]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Writ of Error.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, to
the Honorable the Judge of the United States
District Court for the District of Alaska, Sec-
ond Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between the Northern Light Mining Company, a corporation, plaintiff, and Blue Goose Mining Company, a corporation, defendant, a manifest error hath happened to the great damage of the said Blue Goose Mining Company, plaintiff in error, as by their complaint appears.

We, being willing that error, if any hath been, [213] should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the records and proceedings aforesaid, and all things concerning the same, to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit in the City and County of San Francisco, in the State of California, together with this Writ, so as to have the same at said place on the 3d day of November, 1916, and that the records and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct these errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 4th day of October, 1916.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Divi-

sion, at the Clerk's office [214] at Nome, Alaska,
this 4th day of October, 1916.

[Seal]

G. A. ADAMS.

Clerk of the District Court for the District of
Alaska, Second Division.

Allowed this 4th day of October, 1916.

J. R. TUCKER.

Judge of the District Court for the District of
Alaska, Second Division.

Service of the within Writ of Error and receipt of a Copy thereof is hereby admitted this — day of Oct., 1916.

IRA D. ORTON.

Of Attorney for Deft. in Error. [215]

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Writ of Error. [216]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Citation on Writ of Error.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, To
the Northern Light Mining Company, GREET-
ING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, in the State of California, on the 3d day of November, 1916, pursuant to a Writ of Error filed in the clerk's office of the United States District Court for the District of Alaska, Second Division, wherein the Blue Goose Mining Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that [217] behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 4th day of October, 1916.

[Seal]

J. R. TUCKER,
Judge of the District Court for the District of
Alaska, Second Division.

Attest: G. A. ADAMS,
Clerk.

Personal service of the foregoing citation made

on me and the receipt of a copy thereof admitted
this — day of October, 1916.

IRA D. ORTON,

Of Attorneys for Defendant in Error. [218]

[Endorsed]: No. 2616. In the District Court
for the District of Alaska, Second Division. Nor-
thern Light Mining Co., a Corporation, Plaintiff,
vs. Blue Goose Mining Co., a Corporation, Defend-
ant. Citation. [219]

*In the District Court for the District of Alaska, Sec-
ond Division.*

No. 2616.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

**Order Enlarging Time to December 2, 1916, to File
Record and Docket Cause.**

On motion of O. D. Cochran and G. J. Lomen, at-
torneys for the defendant above named, and good
cause being shown therefor,

ORDERED, that the time for filing and docketing
the transcript upon writ of error herein be, and the
same is hereby extended until the 2d day of Decem-
ber, 1916.

Done in open court this 21st day of October, 1916.

J. R. TUCKER,
District Judge. [220]

#2616. In the District Court for the Territory of Alaska, Second Div. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Order Enlarging Time to File and Docket Transcript on Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 21, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. Orders Judgments. Vol. 11, page 317. C.

[Endorsed]: No. 2880. United States Circuit Court of Appeals for the Ninth Circuit. Blue Goose Mining Company, a Corporation, Plaintiff in Error, vs. Northern Light Mining Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Second Division.

Filed November 22, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

*District Court for the District of Alaska, Second
Division.*

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Appellant,

vs.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Respondent.

**Order Enlarging Time to December 28, 1916, to File
Record and Docket Cause.**

Good cause appearing therefor IT IS HEREBY
ORDERED that the time within which to file the
record and docket the case herein with the clerk of
this court, may be and it is hereby enlarged to the
28th of December, 1916.

Wm. H. HUNT,

Justice of the Circuit Court of Appeals.

Dated this 15th day of November, 1916.

[Endorsed]: Docketed No. 2880. United States
Circuit Court of Appeals for the Ninth Circuit.
Blue Goose Mining Co., &c., Appellant, vs. Nor-
thern Light Mining Co., &c., Respondent. Order
Under Rule to Enlarge Time to December 28, 1916
to File Record Thereof and to Docket Case. Filed
Nov. 15, 1916. F. D. Monckton, Clerk. Refiled
Nov. 22, 1916. F. D. Monckton, Clerk.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT 7
NORTHERN DISTRICT OF CALIFORNIA

BLUE GOOSE MINING COMPANY, a cor-
poration,

Plaintiff in Error,

vs.

NORTHERN LIGHT MINING COMPANY, a
corporation,

Defendant in Error.

No. 2880

Brief for Plaintiff in Error.

C. J. LOMEN,

O. D. COCHRAN,

Attorneys for Plaintiff in Error.

METSON, DREW & MACKENZIE,
and E. H. RYAN,

Of Counsel.

Filed

FEB 23 1917

Filed this.....day of February, A. D. 1917. **F. D. Monckton**

F. D. MONCKTON, Clerk.

Clerk

By....., Deputy.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

NORTHERN DISTRICT OF CALIFORNIA

BLUE GOOSE MINING COMPANY, a corporation,	} No. 2880
<i>Plaintiff in Error,</i>	
vs.	
NORTHERN LIGHT MINING COMPANY, a corporation,	}
<i>Defendant in Error.</i>	

BRIEF FOR PLAINTIFF IN ERROR.

This is a writ of error sued out of the District Court of Alaska, Second Division, by the defendant (plaintiff in error) from a judgment in the sum of \$15,189, together with interest and costs, rendered by said Court against plaintiff in error on an instructed verdict, on the 5th day of August, 1916.

The action was one brought by the Northern Light Mining Company on a foreign judgment obtained against the Blue Goose Mining Company, an Alaskan

corporation, in the Superior Court of the State of California; the action was commenced in June, 1911 (Tr., 43), and judgment was entered March 22, 1912 (Tr., 81).

The Blue Goose Mining Company sought to impeach the judgment for lack of jurisdiction by the Court rendering said judgment as against it, in that it was a corporation organized and existing under the laws of the Territory of Alaska, having no officer or agent or property in the State of California, and doing no business in said State during any of the proceedings had in said action; maintaining that the service upon the pretended agent of said Blue Goose Mining Company was void and that the appearance of attorneys for it in said proceedings was without authority.

The District Court of Alaska refused to allow the introduction of any evidence to show either that the plaintiff in error had no agent or officer in the State of California authorized to represent it, or that it had property in said State, or that the said service upon the President of the Blue Goose Mining Company while he was in the State of California on business other than the business of the plaintiff in error, was void; or that the appearance of attorneys in all proceedings in the case was entirely unauthorized by the Board of Directors of the Company; and over the objection of the plaintiff in error allowed the defendant in error to introduce in evidence the judg-

ment roll of the California court, which failed to show affirmatively jurisdiction in the said Court, not only by service upon an authorized agent of said plaintiff in error, but also that it was doing business in the State of California.

For all of which reasons the plaintiff sued out its writ of error to this Court and assigns the following errors in support of its application for a reversal of said judgment, to wit:

ASSIGNMENT OF ERRORS.

I.

The Court erred in overruling the objection of the defendant to the introduction in evidence at the trial of said cause, of the exemplified copy of Sections 1, 4 and 5 of Article 6 of the Constitution of the State of California, and Section 1920 of the Civil Code of the State of California, said exemplified copies being marked Plaintiff's Exhibit 2 and set forth in full in the Bill of Exceptions filed herein, the certificate to said copies of Sections 1, 4 and 5 of the Article 6 of the Constitution of the State of California, and Section 1920 of the Civil Code of the State of California, being as follows:

STATE OF CALIFORNIA—DEPARTMENT OF STATE.

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copies of sections

1, 4 and 5 of Article VI of the Constitution of the State of California, and section 1920 of the Civil Code of said State, now in full force and effect, with the originals on file in my office, and that the same are correct transcripts therefrom, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the GREAT SEAL of the State of California to be affixed hereto this 15th day of September, A. D. 1915.

FRANK C. JORDAN,
Secretary of State,

By.....Deputy.

(Great Seal of the
State of California.)
(Canceled I. R. S. Ten Cents.) (Tr., 21.)

2.

The Court erred in overruling the motion of the defendant to be permitted to offer evidence preliminary to the acceptance of the Judgment-roll introduced in evidence by the plaintiff showing want of jurisdiction in the court of California over the defendant (Tr., 30).

3.

The Court erred in overruling the objection of the defendant to the introduction in evidence at the trial of said cause of the exemplified copy of the Judgment-roll and Remittitur of the Superior Court of the

State of California, City and County of San Francisco, in the case of *Northern Light Mining Company, a corporation, plaintiff*, vs. *Blue Goose Mining Company, a corporation, defendant*, marked Plaintiff's Exhibit No. 3, and set forth in full in the Bill of Exceptions filed herein (Tr., 30).

4.

The Court erred in admitting in evidence over the objections of the defendant, exemplified copy of notice of appeal and order denying a new trial, being respectively Plaintiff's Exhibits No. 4 and No. 5; said exhibits being set out in full in the Bill of Exceptions filed herein (Tr., 88-9).

5.

The Court erred in admitting in evidence over the objections of the defendant, the copy of the order of the Supreme Court of the State of California, transferring the case to the District Court of Appeal for hearing, being Plaintiff's Exhibit No. 6 set forth in full in the Bill of Exceptions filed herein (Tr., 91).

6.

The Court erred in admitting in evidence over the objections of the defendant, exemplified copy of Order Confirming Judgment, being Plaintiff's Exhibit No. 7, set forth in full in the Bill of Exceptions filed herein (Tr., 95).

The Court erred in sustaining the objection of the plaintiff to the following question asked on cross-examination of the witness Ira D. Orton:

Q. Now, as far as service upon a foreign corporation is concerned, upon whom can process be served under the Statutes of California? (Tr., 100).

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. State to the Court whether or not their (meaning the Blue Goose Mining Company) business is exclusively in the Territory of Alaska (Tr., 101).

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. Mr. Bachelder, is the defendant corporation engaged in any business in the State of California? (Tr., 101.)

10.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. Were they (meaning the Blue Goose Mining Company) engaged in any business in the State of California, or did they have any office in the State of California in the year 1911 (Tr., 102).

11.

The Court erred in denying the offer of the defendant to prove by the witness J. A. Bachelder to the effect that the defendant was not engaged in business in the State of California during the year 1911, and had no office of any character in the State of California (Tr., 102).

12.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. A. Bachelder:

Q. Did they (meaning Fink and White, lawyers of San Francisco, California,) represent or have authority to represent the Blue Goose Mining Company during the year 1911, or at all? (Tr., 102).

13.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. A. Bachelder:

Q. Mr. Bachelder, did the defendant corporation at any time in the year 1911, or since that date, or at all, have any property within the State of California? (Tr., 104).

14.

The Court erred in ruling out the testimony of the witness J. J. Cole to the effect that the defendant had no business elsewhere than in the Territory of Alaska (Tr., 109).

15.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Now, did the Blue Goose Mining Company, the defendant herein, have any business of any kind in the State of California, prior or subsequent to the 2d day of June, 1911? (Tr., 110).

16.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Mr. Cole, on the 2d day of June, 1911, or prior or subsequent thereto, did the defendant cor-

poration own any property or have any office within the State of California, or elsewhere, other than within the Territory of Alaska? (Tr., 110).

17.

The Court erred in denying the offer of the defendant to prove by the witness J. J. Cole that the defendant corporation did not prior or subsequent to the 2d day of June, 1911, have any property within the State of California, nor did it upon or prior or subsequent to such date, have any office within or perform any business within the State of California (Tr., 110-11).

18.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Did the directors of the Blue Goose Mining Company employ or authorize Messrs. Fink and White, or either of them, to appear as attorneys for them in any litigation in the State of California? (Tr., 111).

19.

The Court erred in sustaining the objection of the plaintiff to the introduction in evidence of the By-laws of the defendant corporation, the same being marked Defendant's Exhibit "B" for identification and which are set forth in transcript (p. 120).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Were they (meaning Fink and White) at that time, that is at any time before or between the 2d day of June, 1911, and the 22d day of March, 1912, attorneys or representatives of the Blue Goose Mining Company? (Tr., 130).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. I will put it in a different form: Since you have been a member of the board of directors did the board of directors authorize the employment at any time of Messrs. Fink and White or other counsel to represent the defendant or appear for the defendant in the case in question? (Tr., 131).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Did the board of directors, meeting as a board of directors, at any meeting authorize the employment of Messrs. Fink and White or other

counsel to represent or appear for the corporation in the action in question in the State of California? (Tr., 131).

23.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Now state whether or not the defendant corporation has, since you have been a director of that corporation up to the 22d day of March, the date of the entry of this Judgment, *own* any property within the State of California? (Tr., 132).

24.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Since you have been a director of the corporation state, if you know, whether or not the defendant corporation has, or did do any business within the State of California prior to the 22d day of March, 1912? (Tr., 132).

25.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Did the defendant corporation authorize Messrs. Fink and White to appear or represent

the defendant in the action in the State Courts of California so far as you know as a director of the corporation? (Tr., 132).

26.

The Court erred in denying the offer of the defendant to prove by the witness G. J. Lomen, that he, the said G. J. Lomen, had knowledge of all the acts of the board of directors since the year 1909; that the board of directors at no time authorized the appearance of Fink and White for the defendant in the action in question in the State Courts of California, or to represent the defendant in such action (Tr., 133-4).

27.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Just state what your duties were as counsel for the corporation with relation to litigation of the corporation? (Tr., 134).

28.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. State whether or not there was during the year 1911, or 1912, any agent or representative of the defendant resident of the State of California

who had authority from the board of directors to accept service of process in the State of California issuing from the courts of that State; or who had authority from the board of directors to appear, represent or defend any actions brought against the defendant in the courts of said State of California, or who had authority from the board of directors of the corporation to employ any one to appear, represent or defend actions brought against the defendant within the State of California in the State Courts of California (Tr., 134-5).

29.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Did the board of directors at any time since you have been secretary of the corporation, authorize the employment of any attorney to represent the defendant in any action in the State Courts of California? (Tr., 147).

30.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Mr. Stevenson, during the time between the date of your election as a member of the board of directors and secretary of the defendant corporation, and the 22d day of March, 1911, did the defendant have any property within the State of California? (Tr., 147).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. During such period (meaning between the date of the election of the witness a member of the board of directors of the defendant company and the 22d day of March, 1911) did the defendant corporation have any officer or agent within the State of California who was authorized to receive or accept service of process issuing out of the courts of California? (Tr., 148).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Did the defendant during such period (meaning the period between the date of the election of such witness a member of the board of directors and the 22d day of March, 1911) have any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in an action brought in the courts of the State of California, or in this particular action brought in the State courts of California? (Tr., 148).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. During the same period (meaning the period between the election of the witness a member of the board of directors of the defendant and the 22d day of March, 1911), did the defendant do any business within the State of California? (Tr., 148).

The Court erred in denying the offer of the defendant to prove by the witness L. Stevenson that during the time between the date of his election as a member of the board of directors and secretary of the defendant corporation, and the 22d day of March, 1911, the defendant had no property within the State of California, nor agent nor officer within the State of California, authorized to receive or accept service of process issuing out of the courts of California; nor during such period did the defendant have any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California, or in this particular action brought in the courts of California, nor did the de-

fendant, during such period, do any business or have any business within the State of California (Tr., 148-9).

35.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. What is the character of the business in which the Blue Goose Mining Company is engaged? (Tr., 151).

36.

The Court erred in denying the defendant's offer to prove by the witness Jafet Lindeberg that the defendant was engaged in mining exclusively in the Territory of Alaska (Tr., 151-2).

37.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Was the defendant engaged in any business outside of the District of Alaska in the year 1911, or prior thereto? (Tr., 152).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Was the defendant engaged in any business of any character in the State of California during the year 1911, or prior thereto? (Tr., 152).

The Court erred in refusing the offer of the defendant to prove by the witness Jafet Lindeberg that the defendant during the year 1911, or prior thereto, had no officer outside of the Territory of Alaska, or did any business of any character within the State of California.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Prior to the 2d day of March, or the date of the rendition of the judgment in the case at bar in the State Courts of California, did the defendant have any office within the State of California? (Tr., 153).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Now, did the defendant, prior to the date of the entry of this judgment, as alleged in the State Courts of the State of California, or at all, own any property within the State of California? (Tr., 153).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant corporation have any officer or agent within the State of California prior to the date of the rendition of the alleged judgment herein sued upon in the State Courts of California upon whom service of process was authorized to be had by the company? (Tr., 153).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant, prior to the rendition of the judgment herein sued upon the State Courts of California have any officer or agent within the State of California authorized to do any business on behalf of the defendant in such State? (Tr., 154).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant, prior to the rendition of the judgment herein sued upon in the State Courts of California, have any officer or agent authorized by the corporation to employ counsel to represent the defendant in any actions brought in the State Courts of California? (Tr., 154).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Had you any authority from the board of directors of the corporation to appear, defend or answer in that cause (meaning the cause of *Northern Light Mining Company* vs. *Blue Goose Mining Company*) brought in the State Courts of California? (Tr., 154).

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Had you any authority from the defendant as President or otherwise, to appear in the action brought by the plaintiff herein in the State Courts of California, or to employ counsel therein to defend such action? (Tr., 155).

47.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did anyone, to your knowledge, have any authority on behalf of the company, defendant herein, to appear for the defendant in any actions brought against it in the State Courts of California? (Tr., 155).

48.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. What authority from the company did you have to do so (meaning to employ Messrs. Fink and White to appear and represent the Company in the case of *Northern Light Mining Company* vs. *Blue Goose Mining Company*) in the State Courts of California? (Tr., 156).

49.

The Court erred in striking out the evidence of the witness Jafet Lindeberg to the effect that the defendant never filed any copy of its Articles of Incorporation in the State of California, or filed any documents or papers with any of the officers of such State (Tr., 157).

50.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant ever comply with or attempt to comply with the laws of California as to foreign corporations doing business in that State? (Tr., 157).

51.

The Court erred in denying the offer of the defendant to prove by the witness Jafet Lindeberg, that the defendant never filed any copy of its articles of incorporation in the State of California or filed any documents or papers with any of the officers of such State, and never complied with or attempted to comply with the laws of California with relation to foreign corporations doing business in that State, nor ever had any license of, or office in the State of California, that the defendant never had any office in the State of California nor did any business in the State of California (Tr., 158).

52.

The Court erred in instructing the jury "to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 2d day of March, 1912, at the rate of seven per cent. per annum, amounting in the aggregate to the sum of \$14,189.00" (Tr., 161).

ARGUMENT.

Plaintiff in error has assigned numerous errors made by the Court below. The majority of these errors are based upon the exclusion of all evidence offered to show the lack of jurisdiction of the California courts to render the judgment sued upon in Alaska, in that

(1) No process had ever been personally or otherwise served upon it in said action, as it was not at the time of the institution of said action or at any other time domesticated under the Statute or doing business in California, or owning any property or having any office therein; (2) That it had no agent or officer in California authorized to accept service of process or otherwise represent it; and (3) That it had *not* authorized the attorneys who appeared in said action to represent it.

These errors embrace two propositions of law, the answers to which we submit are controlling in this case.

FIRST—Are the recitals in the record of a judgment obtained in a sister State against a foreign corporation conclusive, when sued upon in the domicile of the judgment debtor?

SECOND—Where an attorney professes to appear and represent such foreign corporation in defending such action, does that render the judgment binding upon

it in the absence of service of process or may his lack of authority be shown in the subsequent action on such judgment?

I.

Before we begin to discuss these propositions of law, an examination into the facts of this record as to jurisdictional averments and denials might well be made. What are the issues involved in the pleadings on the judgment in this respect?

The complaint after alleging the bringing of the action in the California courts and the due issuance of summons, further alleges that it (complainant) "duly served the Blue Goose Mining Company *personally* in said City and County of San Francisco, "State of California, by serving upon said *defendant* "*personally* in said City and County" a copy of said summons, etc.; the due appearance by verified answer, etc., and alleges further that the California courts had full and complete jurisdiction of both said plaintiff and said defendant to said action (Par. IV, Compl. Tr., 3-4).

The amended answer denies any knowledge of the bringing of the action by filing a complaint. . . . on the 2nd day of June, 1911, "and that on said date *a summons was duly issued in said cause*" and "*demands strict proof thereof*" (Am. Ans., Par. III, Tr., 8). Denies that the summons was duly or at all served in the City of San Francisco or elsewhere by

serving upon it personally or otherwise, and denies the appearance of the Blue Goose Mining Company in said action or that it filed a verified answer; and denies that the California courts "had full, complete or any jurisdiction" over it to render the judgment sued on and demands strict proof as to all these and other allegations of Paragraph IV (Am. Ans., Par. III, Tr., 8-9). And then goes on to plead:

"Further answering said complaint defendant alleges that at the time said action was commenced, as set forth and alleged in plaintiff's complaint and from that time up to, and at the time said supposed judgment was rendered, as alleged in plaintiff's complaint, the said defendant was a corporation duly organized under the laws of the Territory of Alaska, and was a citizen of the said Territory of Alaska and a resident therein and not elsewhere *and was not served with process, and had no notice of the pendency of said alleged action in said Superior Court for the City and County of San Francisco, State of California, and that it, said defendant, never appeared thereto or therein in person or by attorney and did not at the time of the alleged commencement of said action, or the pretended service of summons therein or the entry of said alleged judgment, live within the State of California, or have within said State of California, any agent, officer, representative or employe authorized to accept service of process, or upon whom service of process could be made, or authorized to appear in said alleged action or otherwise, nor did the defendant during any of said times have any property within the State of California or had any business in said State, or within the*

jurisdiction of the said Court alleged to have rendered the said judgment" (Am. Ans., Par. III, Tr., 10-11).

Here the issue is squarely made as to the *jurisdiction* of the courts of California to render the judgment complained of.

It will be noted that the amended answer demands strict proof of the allegation as to the filing of the complaint and the issuance of the summons and the service thereof (Tr., 8-9). And it will be further noted that the judgment roll introduced in evidence over the objection of the plaintiff in error (Assignment of Error, 3, Tr., 30) contains no copy of Summons or return thereon of service upon the Blue Goose Mining Company, nor is there in the record any evidence of any service of process upon any officer of the corporation. J. Lindeberg, the President of the Blue Goose Mining Company, who attempted to act for the company, was questioned as to whether he had ever been served with process and testified as follows:

Q. Now, Mr. Lindeberg, were you served with any summons or process in this case by any officer in the State of California?

A. *I have no recollection of ever having been served with any process in that case* but if I was served it would be after my return in the Fall of 1911. I was at that time President of the defendant company and a member of its Board of Directors. The Blue Goose Mining Company is an Alaskan corporation (Tr., 151).

An answer was, however, filed in the case by attorneys employed by Mr. Lindeberg (Tr., 156).

The position of the plaintiff in error is that Mr. Lindeberg had no authority to represent it as its agent or officer in California, to accept process for it or employ attorneys; further that it had never complied with the laws of California respecting foreign corporations, doing business in California, and that it never had done business in California and owned no property therein.

As we have above stated the question of jurisdiction was squarely raised by the issues on these propositions.

The position taken by the Court below as shown by its rulings on the evidence, as being not competent, was that the judgment roll was conclusive on all recitals therein, including jurisdiction (Assignments Nos. 9, 10, 11, 13, 14, 15, 16, 17, 23, 24, 28, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 49, 50, 51).

But no question of jurisdiction was raised in the California courts and so the question of jurisdiction was not concluded.

An examination of the findings of fact and conclusions of law show a recital as follows:

"It appearing to the Court that the defendant *had been regularly served with a copy of the summons and complaint* in said cause, in the City and County of San Francisco, State of California, and that the defendant had duly appeared by filing a demurrer and answer in said action and *had not*

objected to the jurisdiction of the said Court, the Court proceeded to hear the cause. . . . that the defendant is and at all times involved herein was a corporation organized and existing under and by virtue of the laws of the District of Alaska" (Tr., 73-4).

But although the plaintiff had alleged that the Blue Goose was "doing business" in California, the Court significantly fails to make a finding to this effect and makes no finding that it has any property in the State. Therefore there is no presumption as to jurisdiction by reason of the existence of this latter fact.

So we have a recital that a foreign corporation "was regularly served" with process, but no finding that it was "doing business" in California. How can a foreign corporation be regularly served with process in the absence of either of these two latter conditions, or in the absence of a showing that jurisdiction was obtained through constructive service by reason of its ownership of property within the territorial limits of the State of California?

It is elementary that no State has any jurisdiction over persons or property beyond its territorial limits, although possibly it may affect persons beyond its boundaries by virtue of their *ownership of property* within its territorial jurisdiction.

Story's Conflict of Laws, Chap. 2;

Wharton's International Law, pt. 2, Chap. 2.

The Court below ruled out all questions propounded by the plaintiff in error to show that it had no property in the State of California (Assignments of Errors, Nos. 13, 16, 30, 34, 36, 41), and the judgment roll showed negatively no doing of business within the State of California by the plaintiff in error.

In the case of *Kendall v. American Automatic Loan Company*, 198 U. S., 477, 49 L. Ed., 1133-1135, the question of the validity of a subpoena in equity issued by a Federal Circuit Court upon the resident treasurer of a foreign corporation *not doing business* in the State was in question upon the appeal from an order setting aside the service.

In holding the order of the lower Court to be correct, Justice Peckham says:

“Regarding the case as properly here, the question is whether the service made upon the treasurer of the appellee corporation was a valid service upon the corporation itself. We think it was not. It is perfectly apparent that the corporation was, at the time of the service on the treasurer, *doing no business whatever within the State of New York*, and that it had never done any business there since it was incorporated in the State of West Virginia. While we have lately held that, in the case of a foreign corporation, the service upon a resident director of the State where the service was made was a good service where that corporation was doing business within that State (*Pennsylvania Lumbermen's Mut. F. Ins. Co. v. Meyer*, 197 U. S., 407, ante, 810, 25 Sup. Ct. Rep., 483), yet such service is insufficient for a court to

acquire jurisdiction over the corporation where the company was not doing any business in the State, and was situated like this company at the time of the service upon the treasurer. *Conley v. Mathieson Alkali Works*, 190 U. S., 406, 47 L. ed., 1113, 23 Sup. Ct. Rep., 728."

In *Henning v. Planters' Ins. Co.*, 28 Fed., 440, quoting from page 444, it was said:

" . . . The courts of another State will not give effect to the judgment unless it appear by the record that the court had potential jurisdiction over the person of the defendant, and if the record show that,—which this does not,—then the defendant may contradict it by proof, in order to save his rights of 'natural justice,' whatever that may mean. *Whart. Confl. Laws* (2d Ed.), Sec. 646, *et seq.*; *Moulin v. Insurance Co.*, 24 N. J. Law, 222; S. C., 25, N. J. Law, 57. And it will be found from the cases cited that, beginning with *Pennoyer v. Neff*, 95 U. S., 714, the Supreme Court has vigorously laid hold of this rule with a deliberate purpose to protect in the most thorough manner all non-residents against judgments where there is no personal service, except so far as the State rendering them has property within its borders to satisfy them by its own execution of them. Elsewhere, except to that extent, they are utterly void. This case of *St. Clair v. Cox*, *supra*, is one of the series, and it establishes, as an element of this protection, that, when foreign corporations are sued, the *record* must show *affirmatively*, not only that there was service upon an 'agent,' but that the corporation was in fact 'doing business' in the State. This latter fact being shown, the Court will assume, in the absence of proof to the con-

trary, that the party returned served as 'agent' was in fact the representative of the corporation, but not otherwise."

It is true foreign corporations may give their consent that service of summons may be made by service upon an appointed agent within a foreign State, and such service may sustain the jurisdiction of a court in an action on a personal judgment based thereon. But unless such agent is designated and served and consent deduced therefrom, no foreign corporation can be said to be within the jurisdiction of a court of a foreign State (unless such corporation waives such service in the absence of a designated agent) by appearance in court voluntarily. *And whether such designated agent has been so served; or whether the corporation has no agent and has appeared voluntarily or by attorney and waived process*, are matters of fact which go to the jurisdiction of the Court which rendered the judgment and may be inquired into when such judgment is sued upon in the domicile of the corporation defendant. And the doctrine that the jurisdiction of the Court rendering a judgment may be inquired into when a suit is brought in the courts of another State on that judgment does not depend on the authority of adjudicated cases. It rests as has been held upon a principle of natural justice. No person should be condemned without the opportunity to make a defense, and to show that the accusation against him is unfounded; and if a person has a

right to *defend an action* upon a judgment rendered against him in a sister State he has the further right to show a want of jurisdiction.

The case of *Starbuck v. Murray*, 5 Wend. (N. Y.), 148, (21 Am. Dec., 172), is most often cited approvingly in the later decisions of both Federal and State Courts for the reasoning there laid down on the propositions involved.

In that case the record was set forth and it did not show the fact, which was alleged as matter of estoppel—the appearance of both defendants—judgment was therefore given against the replication setting up the estoppel.

The Court say:

“But it is strenuously contended that if other matter may be pleaded by the defendant, he is estopped from asserting anything against the allegation contained in the record. It imports perfect verity, it is said, and the parties to it can not be heard to impeach it. It appears to me that this proposition assumes the very fact to be established, which is the only question in issue. *For what purpose does the defendant question the jurisdiction of the court? Solely to show that its proceedings and judgments are void, and therefore the supposed record is not in truth, a record.* If the defendant had not proper notice of, and did not appear to the original action, all the State courts with one exception, agree in opinion that the paper introduced as to him is no record; *but if he can not show, even against the pretended record, that fact on the alleged ground of the uncontrollable verity of the record, he is deprived of his defense*

by a process of reasoning that is, to my mind, little less than sophistry. The plaintiffs, in effect, declare to the defendant, the paper declared on is a record, because it says you appeared, and you appeared because the paper is a record. This is reasoning in a circle. The appearance makes the record uncontrollable verity, and the record makes the appearance an unimpeachable fact. The fact which the defendant puts in issue (and the whole current of State court authority shows it to be a proper issue) is the validity of the record, and yet it is contended that he is estopped by the unimpeachable credit of that very record from disproving any one allegation contained in it. Unless a court has jurisdiction, it can never make a record which imports uncontrollable verity to the party over whom it has usurped jurisdiction, and he ought not therefore to be estopped, by any allegation in that record, from proving any fact that goes to establish the truth of a plea alleging a want of jurisdiction. So long as the question of jurisdiction is in issue, the judgment of a court of another State is, in its effect, like a foreign judgment; it is *prima facie* evidence; but for all the purposes of sustaining that issue, it is examinable into to the same extent as a judgment rendered by a foreign court. If the jurisdiction of the court is not impeached, it has the character of a record, and for all purposes should receive full faith and credit.

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“My views in relation to the estoppel by the record are already expressed. To say that the defendant may show the supposed record to be a nullity by showing a want of jurisdiction in the court which made it, and at the same time to estop him from doing so, because the court have inserted in the record an allegation which he

offers to prove untrue, does not seem to me to be very consistent. Under the operation of such a rule, a court could always sustain its jurisdiction if it had any solicitude to do so; or rather, the party who had the benefit of its decision, and who by the practice of most tribunals is intrusted with making the record, would not fail to put it beyond the power of his opponent to show a want of jurisdiction.

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"A more direct authority on the other side of the question is found in the case of *Aldrich v. Kinney*, 4 Conn., 380 (10 Am. Dec., 151). There the defendant was permitted to show that he had no notice of the suit, and did not appear, although it appeared by the record produced that he had appeared by attorney. This is a direct authority against the principle by which it is attempted to sustain the replication in this case. *If the allegation in the record of an appearance by an attorney is examinable into in an action on the judgment, and may be disproved, I can not see why the allegation of an appearance of the party in person is not in like manner questionable.* I am, therefore, of opinion that the demurrer to the plaintiff's replication is well taken."

The judgment against the replication setting up the estoppel was reversed.

Therefore we contend it is settled law that

THE RECITALS OF A RECORD AS TO JURISDICTIONAL FACTS MAY BE CONTRADICTED IN THE COURTS OF ANOTHER STATE WHERE THE RECORD IS PRESENTED.

The rule is now settled beyond possibility of change or construction, that in an action on a judgment of a court of a sister State, it is open to the defendant to *deny* the jurisdiction of the court rendering the judgment over his person or the subject matter of the suit.

Sec. 897, *Black on Judgments*, p. 1330.

It is well settled doctrine that if the court which renders judgment has no jurisdiction over the parties or the subject matter, *it is always open* to the defendant to show this fact when he is sued on a judgment in another State. In such a case he is not to be confined to the single plea of *nul tiel* record, *but is at liberty to plead the want of jurisdiction specially*.

Sec. 887, *Black on Judgments*, p. 1317.

Since a judgment rendered in one of the States is entitled to the same faith and credit in every other State which it receives at home, it follows that, in an action upon such judgment, no defenses are ad-

missible except such as could be set up in an action on the same subject in the State of its rendition and *except the defense of want of jurisdiction and perhaps fraud.*

Sec. 881, *Black on Judgments*, p. 1313.

In the case of *Cole v. Cunningham*, 32 L. Ed., 538-541, Chief Justice Fuller, in discussing the "Full Faith and Credit" clause contained in Article IV, Section 1, of the Constitution and Sec. 905 of the Revised Statutes of the United States, says:

"This does not prevent an inquiry *into the jurisdiction of the court in which a judgment is rendered to pronounce the judgment, nor into the right of the State to exercise authority over the parties or the subject matter*, nor whether the judgment is founded on and impeachable for a manifest fraud. The Constitution did not mean to confer any new power on the States but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of the States, domestic judgments to all intents and purposes but only gave a general validity, faith and credit to them as evidence."

See also:

St. Clair v. Cox, 106 U. S., 350, 27 L. Ed., 222;

Grover & Baker Machine Co. v. Radcliffe,
137 U. S., 287, 34 L. Ed., 670;

Thompson v. Whitman, 18 Wall., 457, 21 L. Ed., 897;

- Cooper v. Newell*, 173 U. S., 555, 43 L. Ed., 808;
Knowles v. Logansport Gaslight & Coke Co.,
 19 Wall., 58, 22 L. Ed., 70;
Goldey v. Morning News, 156 U. S., 521, 39
 L. Ed., 518;
Kendall v. American Automatic Loan Co., 198
 U. S., 477, 49 L. Ed., 1133-35;
Conley v. Mathieson Alkali Works, 190 U.
 S., 406, 47 L. Ed., 1113;
Bell v. Bell, 181 U. S., 173-175, 45 L. Ed.,
 804-7;
U. S. v. American Bell Telephone Co., 29
 Fed., 17-35;
Henning v. Planters' Ins. Co., 28 Fed., 440;
Citizens Bank v. Brooks, 23 Fed., 21;
Allen v. Downs, 22 Fed., 805;
Graham v. Spencer, 14 Fed., 603;
Eureka etc. Co. v. California Ins. Co., 130
 Cal., 153;
Greenzweig v. Strelinger, 103 Cal., 278.

The main issue in the case was as to whether the plaintiff in error had an agent upon whom process in this case could have been served in California; and the plaintiff in error was foreclosed of all right to introduce any evidence as to such issue by the position taken by the Court below in its rulings (Assignments of Error 28, 31, 32, 34, 39, 40, 42, 43, 49,

50, 51), and which position we believe must have been based upon the assumption that the recitals in the judgment roll admitted in evidence were conclusive. No other explanation of the rulings of the Court can be arrived at. We submit that these rulings constitute reversible error, for the judgment roll is, as is shown by the cases cited, merely *prima facie* evidence of its contents which may be contradicted by parol.

In the case of *Thompson v. Whitman*, 18 Wall., 457, 21 L. Ed., 897, Judge Bradley in discussing the question of the contradiction of the record, said:

"If it is once conceded that the validity of a judgment may be attacked collaterally by evidence showing that the Court had no jurisdiction, it is not perceived how any allegations contained in the record itself, however strongly made, can effect the right to so question it. The very object of the evidence is to invalidate the paper as a record. If that can be successfully done, no statements contained therein have any force. If any such statements could be used to prevent an inquiry, a slight form of words might always be adopted so as to effectually nullify the right of such inquiry. Recitals of this kind must be regarded like asseverations of good faith in a deed which avail nothing if the instrument is shown to be fraudulent. The records of the domestic tribunals of England and some of the States it is true, are held to import absolute verity as well in relation to jurisdictional as to other facts in all collateral proceedings. . . . But, as we have seen, *that rule has no territorial force.* . . . On the whole, *we think it clear that the jurisdic-*

tion of the Court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the provisions of the fourth article of the Constitution and the law of 1790 and notwithstanding the averments contained in the record of the judgment itself."

In the case of *Knowles v. Logansport Gaslight & Coke Co.*, 19 Wall., 58, 22 L. Ed., 70, this principle was reaffirmed where it was held that although the record might show a return of the sheriff to the effect that the defendant had been *personally* served with process, the latter had the right to deny and disprove it. In that case the Court say:

"But the defendant also offered to prove by himself and Haney that neither of them had ever in fact been served with process and that in consequence the Court never as to them, acquired jurisdiction of the person. As this subject has been lately considered in *Thompson v. Whitman*, . . . it is unnecessary to go over the subject again. *In our opinion the defendant has a right to show by proof, that he had never been served with process, and that the Circuit Court of Cass County never acquired jurisdiction of his person. As this was refused him on the ground that the evidence was inadmissible, the judgment must be reversed.* Where defendant resides in the State in which the proceedings are had, service at his residence and perhaps other modes of constructive service may be authorized by the laws of the State. *But in the case of non-residents like that under consideration, personal service cannot be dispensed with unless the defendant voluntarily appears."*

In the later case of *Cooper v. Newell*, 173 U. S., 555, 43 L. Ed., 808, in holding that the question of the jurisdiction of the State court to render a judgment then under consideration in a United States Circuit Court in the same State, might be inquired into by that Court, the Supreme Court again reaffirms the doctrine of *Thompson v. Whitman*, and say:

"In *Thompson v. Whitman*, 18 Wall., 457, a leading case in this Court, it was ruled that 'neither the constitutional provision that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, nor the acts of Congress passed in pursuance thereof, prevents an inquiry into the jurisdiction of the Court by which a judgment offered in evidence was rendered;' that 'the record of a judgment rendered in another State may be contradicted as to the facts necessary to give the Court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist,' and that 'want of jurisdiction may be shown either as to the subject matter of the person, or in proceedings *in rem*, as to the thing.'"

In the case of *Goldey v. Morning News*, 156 U. S., 521, 39 L. Ed., 518, Justice Gray said:

"It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction except by actual service of notice, within the jurisdiction upon him, *or upon some one authorized to accept service on his*

behalf or by his waiver by general appearance or otherwise of the want of due service. . . . So a judgment rendered in a court of one State against a corporation neither incorporated nor doing business within the State must be regarded as of no validity in the courts of another State, or of the United States, unless service of process was made in the first State upon an agent appointed to act there for the corporation, and not merely upon an officer or agent residing in another State, and only casually within the State and not charged with any business of the corporation there."

While in the oft quoted case of *St. Clair v. Cox*, 106 U. S., 350, 27 L. Ed., 222, 226, where the record of the judgment (as here) failed to show that the judgment debtor was *doing business* in the State where action was brought when service was made on its agent, the *record was held properly excluded*, the Court saying:

"It is sufficient to observe that we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential in order to support the jurisdiction of the Court to render a personal judgment that *it should appear somewhere in the record*, either in the application for the writ, or accompanying its service in the pleadings or the finding of the Court that the *corporation was engaged in business in the State*. The transaction of business by the corporation in the State, general or special, appearing, a certificate of service by the proper officer on the person who is its agent there, would in our opinion, be sufficient *prima facie* evidence that the agent represented the Company in the business. *It*

would then be open when the record is offered in evidence in another State, to show that the agent stood in no representative character to the Company. That his duties were limited to that of a subordinate employe, or to a particular transaction, or that his agency had ceased when the matter in suit arose."

II.

Now as to the effect of the appearance of plaintiff in error by attorney in the California Courts.

We do not question the conclusiveness of the record as to the fact of the attorneys' appearance, but claim such appearance is only *prima facie* evidence of their authority to act, where, as in this case, an issue has been raised as to the service of process on plaintiff in error and as to the authority of attorneys to so appear.

If any presumption arises by reason of such appearance as to their right to so do, such presumption may be rebutted by showing a want of authority of the person pretending to employ such attorneys.

We were, through the rulings of the Court below, denied the right to show the lack of authority of J. Lindeberg to act as the agent of the Blue Goose Mining Company in the State of California, or to accept service of process or to appear and defend any action in its behalf. We were denied the right by the rulings of the Court below to show that the

Blue Goose Mining Company did not hold any property in the State of California.

If we had been permitted to go behind the recitals of the judgment roll in this respect, as was our legal right, and had maintained our contention, surely an appearance of attorneys employed by an unauthorized agent would be of no avail to bind the Blue Goose Mining Company. It would seem to require no argument that if Lindeberg was not such a person upon whom process could be served, or who could accept service or appear in such action on behalf of the Blue Goose Mining Company (which we were denied the right to show), then he would have no authority to employ attorneys and by such action confer upon the attorneys a greater right in the matter of such appearance than he, himself, had.

If then we had been permitted to show, as was our further legal right, that the only authority for the appearance of the attorneys in this case was their employment by a pretended agent of the corporation, whose acts were *ultra vires*, the presumption that they were rightfully in court representing the plaintiff in error, arising in favor of such attorneys as officers of the Court, would fall.

If the record states that an attorney appeared, this is simply *prima facie* evidence of the authority to appear and which presumption the defendant is at

full liberty to overthrow by showing that he never authorized the attorney to appear for him.

Shelton v. Tiflin, 6 How. (U. S.), 163; 12 L. Ed., 387;

Cooper v. Newell, 173 U. S., 555; 43 L. Ed., 808;

Hatfield v. King, 184 U. S., 164; 46 L. Ed., 481;

Hall v. Mendenhall, 21 Wall., 452;

Citizens Bank v. Brooks, 23 Fed., 21;

Graham v. Spencer, 14 Fed., 603;

Section 896, *Black on Judgments*;

Shumway v. Stillman, 6 Wend. (N. Y.), 447;

McDermott v. Clary, 107 Mass., 501.

“‘The judgment of a court of general jurisdiction in any State in the Union,’ said the Court in New York at an early day, is ‘equally conclusive upon the parties in all the other States as in the State in which it was rendered. This, however, is subject to two qualifications. First, if it appear by the record that the defendant was not served with process and did not appear in person or by attorney, such judgment is void; and second, *if it appears by the record that the defendant appeared by attorney, the defendant may disprove the authority of such to appear for him*’” (*Shumway v. Stillman*, 6 Wend. (N. Y.), 447).

Section 896, *Black on Judgments*, p. 1326.

In the case of *Shelton v. Tiflin*, *supra*, this principle was early recognized. There the U. S. Supreme Court say:

"Had the Circuit Court which rendered the judgment jurisdiction of the case? The plaintiffs were citizens of Virginia, John M. Perry was a citizen of Louisiana, and L. P. Perry of Missouri. No process was served upon L. P. Perry, nor does it appear that he had notice of the suit until long after the proceedings were had. But there was an appearance by counsel for the defendants, and defense was made to the action. This being done by a regularly practicing attorney, it affords *prima facie* evidence at least, of an appearance in the suit by both defendants. Any individual may waive process and appear voluntarily. John M. Perry acted in some matters as the agent of L. P. Perry, but it does not appear that he had authority to waive process and defend the suit. . . . The appearance was the act of the counsel and not the act of the Court. Had the entry been that L. P. Perry came personally into Court and waived process, it could not have been controverted. But the appearance by counsel who had no authority to waive process or to defend the suit for L. P. Perry may be explained. An appearance by counsel under such circumstances, to the prejudice of a party, subjects the counsel to damages; *but this would not sufficiently protect the rights of the defendant. He is not bound by the proceedings and there is no other principle which can afford him adequate protection.*"

In the case of *Cooper v. Newell*, *supra*, the United States Supreme Court quote approvingly *Vilas v.*

Plattsburgh & Montreal Railroad, 123 N. Y., 440, 9 L. R. A., 844, and say:

“And so in New York where a judgment of a court of that State was drawn in question which had been entered against a non-resident, who was not, during the pendency of the proceedings, within the jurisdiction of the State . . . Andrews, J., delivering the opinion of the Court (N. Y.) said:

“‘It is well settled that in an action brought in our courts on a judgment of a court of a sister State, the jurisdiction of the Court to render the judgment may be assailed by proof that the defendant was not served and did not appear in the action, *or where an appearance was entered by an attorney that the appearance was unauthorized, and this even where the proof directly contradicts the record.*’”

The case of *Hatfield v. King*, 184 U. S., 164, 46 L. Ed., 481, was an appeal from a decree quieting title to lands claimed by the defendants. One of the appellants moved the Supreme Court for a rule against the attorney who had appeared for her below, stating she had not been served with process, that counsel unauthorized entered her appearance and after having so wrongfully acted failed to take proper steps to protect appellant's rights.

The U. S. Supreme Court say:

“Before any proceedings could rightfully be taken against the defendants, it was essential that either they be brought into Court by service of process or that a lawful appearance be made in

their behalf. Confessedly they were not served with process and they now deny the right of counsel to have entered an appearance for them."

The Supreme Court sent the case back with instructions to the Circuit Court to set aside the decree as well as the *appearance* of the defendants and to proceed thereafter in accordance with law and after a full investigation of the charges of misconduct on the part of the attorneys.

In the case of *Citizens Bank v. Brooks*, 23 Fed., 21, in an action upon a judgment of a sister State, the defendant set up that no attorney or other person had been authorized to appear for him in the original action, non-residence and non-service of process. Replication by plaintiff that defendant had knowledge of suit, procured attorneys and defended and paid the attorneys. Defendant traversed and joined issue on this.

The Court say:

"The plaintiff claims that the record of the appearance in the cause of attorneys of the court for the defendant is conclusive of their right to appear for him, and that evidence to the contrary should not be considered. There are cases which perhaps go to this length. *Mills v. Duryee*, 7 Cranch. 481; *Lapham v. Briggs*, 27 Vt., 26. But it is now well settled in the courts of the United States that want of jurisdiction to bind the person may be shown in an action upon the judgment against the person. *Thompson v. Whitman*, 18 Wall., 457; *Knowles v. Gaslight Co.*, 19 Wall., 58; *Hall v. Lansing*, 91 U. S., 160; *Graham v. Spencer*, 14 Fed. Rep., 603. The fact that the attorneys

entered an appearance for the defendant is, perhaps, conclusively shown by the record, *but that they had authority in fact, or any more than that they assumed to have authority, is not shown at all by it.* The presumption that all was rightly done arising from their being officers of the court, is admitted to, and doubtless does, cast the burden upon the defendant of showing that the appearance was without his authority.

“If he (defendant) was heard there upon the trial he has no right to be heard again upon the questions involved except upon appeal, but is bound. That he had notice of the suit, however, full and formal, *out of* the jurisdiction would not bind him. He could not be compelled to appear by anything done without the jurisdiction. *Bischoff v. Wethered*, 9 Wall., 812. Therefore taking his deposition would not bind him. The other party had the right to take it in order to obtain a judgment to bind the property attached, but he could not be made a party personally in that manner; if he could, the jurisdiction of courts could be extended without their territorial limits by merely resorting to that proceeding.

“As the plaintiff had, and was entitled to, no proceedings to compel his personal appearance, it could not be had without he knowingly and voluntarily yielded it, and he could not ratify the assumption of others to appear and submit his case for him without knowledge of what they had assumed to do for him. *This is not intended to imply that what was done without jurisdiction over his person could be made binding upon him by any ratification after the judgment. Jurisdiction over the person at the time of the judgment*

is necessary to its validity as a personal judgment. A defendant might probably compensate anyone who had, without his knowledge, undertaken the defense of a suit against him which might bind his property and failed and not subject himself to the consequences of making the judgment bind him personally, when before it would only bind his property."

We submit that these cases are decisive of the right of the plaintiff in error to have had a hearing upon the issue of non-service of process, upon the fact of no authorized agency in California to act in the matter of the defense of the action and upon the question of the right of the attorneys to represent it in the case.

We offered in evidence the testimony of J. A. Bachelder, a director since 1911 of the plaintiff in error; of J. J. Cole, Vice-President and Director since 1909 or 1910; of G. J. Lomen, a Director since 1908 or 1910, and General Counsel of the Blue Goose Mining Company, and of L. J. Stevenson, a Director since 1911 and Secretary and Treasurer of the Company (constituting, with J. Lindeberg, the Board of Directors), to meet the issue presented by the amended answer on these propositions of fact, all of which was ruled out as incompetent.

We further offered the testimony of J. Lindeberg, the President of the Company, to prove that neither at the time the action was brought or at any other time did the plaintiff in error do business other than

in the Territory of Alaska, that it had no office outside of Alaska, nor in the State of California, that it owned no property in California, nor had it any agent in California at the date of the rendition of the judgment or prior thereto authorized to accept process or to employ counsel in actions or in this action in the Courts of California; all of which was ruled out.

In this respect we wish to call attention to the following testimony of J. Lindeberg:

“Q. Had you any authority to *employ counsel* in that case to *appear* and *represent* the company, or to *appear* and represent the Company therein *other than your general authority as President* of the Company?

“A. None” (Tr., 156-7).

But what his *general* authority as President of the Company consisted of, was barred from the record by the ruling of the Court, holding that the By-Laws of the Company were not admissible in evidence (Assignment of Error 19, Tr., 120, *et seq.*). *Non constat* from this answer his authority might have been broad enough to have warranted his employment of attorneys and appearance in said action. As a matter of fact the By-Laws show no such power. Art. V, Sec. 3, of the By-Laws, provides:

“The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and stockholders,

shall prepare and present at each annual stockholders' meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all the duties usually appertaining to the offices of president of a corporation. He shall have general charge (subject to the control of the Board of Directors) of the business affairs of the corporation, may sign and indorse bonds, bills, checks and promissory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power without the previous consent of the board of directors to incur any debt on behalf of the corporation in excess of the sum of Five Hundred Dollars, or without such consent to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the directors advised as to the affairs of the corporation."

It will be seen that he is to "have general charge (*subject to the control of the Board of Directors*) of the *business affairs* of the corporation . . ."

And it is expressly provided that "he shall have "no power *without the previous consent* of the Board "of Directors to incur *any debt on behalf of the corporation in excess* of the sum of *five hundred dollars*, or *without such consent*, to *bind* the corporation *by any obligation involving a liability in excess* "of such sum."

Lindeberg testified that he paid the attorneys he had employed acting upon his "general authority as

President"; that he paid them \$1,000. That he paid it out of the Pioneer Mining Company funds and *years afterward*, in 1914 or 1915, he charged it up to the Blue Goose Mining Company.

It is clear from the provisions of Section 3 of Article V of the By-Laws that Lindeberg had no authority to appear and represent or employ attorneys to appear and represent the plaintiff in error in any litigation in the Courts, and that while he had *general charge* of the business of the corporation such charge was *subject to the control* of the Board of Directors.

We submit this evidence was most material on the question of Lindeberg's authority. But the Court ruled the By-Laws out and on the suggestion and objection of Mr. Orton, would not permit them to be *even read* when the offer to introduce was made (Tr., 120-121).

This case was tried before a jury, and this evidence was material and should have gone to the jury as a question of fact to be considered by them in addition to all the other evidence which the Court erroneously excluded. We submit the exclusion of these By-Laws was reversible error.

The Court below, as we have suggested, tried this case upon the theory that the record of the judgment of the California Court imported absolute verity in all respects, including jurisdiction. Upon that theory only could it have given an instruction to the jury

to return a verdict for the defendant in error, which instruction we also assign as reversible error. In fact we submit that the record in this case is a tissue of errors based upon the false theory of the case adopted by the Court below upon the suggestion of the defendant in error.

For all of which reasons we ask that the case be reversed.

C. J. LOMEN,
O. D. COCHRAN,

Attorneys for Plaintiff in Error.

METSON, DREW & MACKENZIE,
and E. H. RYAN,
Of Counsel.

No. 2880

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

Northern District of California.

BLUE GOOSE MINING COMPANY

(a corporation),

Plaintiff in Error,

VS.

NORTHERN LIGHT MINING COMPANY

(a corporation),

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

IRA B. ORTON,

GEO. B. GRIGSBY,

Attorneys for Defendant in Error.

W. S. ANDREWS,

Of Counsel.

Filed this.....day of March, 1917.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

No. 2880

IN THE
United States Circuit Court of Appeals

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BLUE GOOSE MINING COMPANY (a corporation), VS. NORTHERN LIGHT MINING COMPANY (a corporation), <i>Defendant in Error.</i>	} <i>Plaintiff in Error,</i>
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BRIEF FOR DEFENDANT IN ERROR.

The fifty-two alleged errors which have been assigned by the plaintiff in error are naturally divisible into two general divisions: first, those predicated upon the refusal of the trial court to exclude certain evidence offered by defendant-in-error, and second, those based upon the exclusion by the lower court of certain evidence offered by the plaintiff-in-error. The first division embraces the first six assignments of error and the second division the last forty-six assignments. Though counsel have

not urged, or even commented upon, any of the alleged errors in the first division we will discuss these assignments first and then take up the exceptions in the second division later.

Assignment No. 1 is based on the admission into evidence by the court of exemplified copies of Sections 1, 4 and 5 of Article 6 of the Constitution of the State of California and Section 1920 of the Civil Code of the State of California. Counsel's objection was the technical one that the certificate of the Secretary of State of the State of California merely certified these statutes to be in full force and effect on September 15, 1915, the date of the certificate, and that it could not be presumed that these statutes were in force prior to that date when the judgment was rendered and affirmed. It is not necessary to consider whether or not there is any merit in this technical objection for the testimony later of Ira D. Orton, a member of the bar of the State of California, established that these constitutional provisions and statute were in full force and effect prior to and at the time of the rendition and affirmance of the judgment. This testimony was not contradicted and no assignment of error concerning it has been made. If anything further were needed to meet this particular assignment of error, it might be pointed out that the trial court had the right to take judicial notice of the Constitution of the State of California and its public statutes and that this judicial knowledge includes the date when the statutes went into effect, when suspended or

repealed and the facts recited or recognized in the statute. And it might be added that the judicial knowledge of the United States Supreme Court and the United States Circuit Court of Appeals upon appellate review of a judgment or decree of a federal court is equally extensive.

16 Cyc., 890 and numerous cases cited;
 Owings v. Hull, 9 Pet. (U. S.) 607, 625;
 Gerling v. Baltimore etc. R. Co., 151 U. S.
 673;
 Barry v. Snowden, 106 Fed. 571;
 Mills v. Green, 159 U. S. 651;
 N. Y. Bank v. Franklyn, 120 U. S. 747;
 Walnut v. Wade, 103 U. S. 683;
 South Ottawa v. Perkins, 96 U. S. 260.

There was obviously no error in the admission by the court over counsel's objection of the judgment roll and remittitur to the Superior Court of the State of California, nor in the court's refusal to allow counsel to attack the jurisdiction of the California court prior to the introduction of the judgment roll. Indubitably the judgment roll was relevant, material and competent evidence and showed prima facie jurisdiction over the plaintiff in error by the California court. The findings of fact contained in the judgment roll recite that

"W. S. Andrews, Esq., and A. H. Brandt, Esq., appeared as counsel for the plaintiff and Messrs. Fink & White appeared on behalf of the defendant. It appearing to the Court that the defendant had been regularly served with a copy of the summons and complaint in said

cause, in the City and County of San Francisco, State of California, and that the defendant had duly appeared, by filing a demurrer and answer in said action and had not objected to the jurisdiction of said Court, the Court proceeded to hear said cause.”

Without relying on the recitals in the judgment roll of service of process in California upon the plaintiff-in-error, it is the universal rule as counsel admit, that “where the record of a judgment of another state recites that the defendant appeared by attorney, this furnishes prima facie evidence that the appearance was authorized”.

23 Cyc., 1581;

Brief of Plaintiff in Error, pages 41, 42;

Kline v. Ins. Co., 80 Wash. 608; 142 Pac. 7;

Williams v. Hirschfield, 122 Pac. 539;

Lawrence v. Jarvis, 32 Ill. 304;

Reber v. Wright, 68 Pa. St. 471.

The jurisdiction of the California court being prima facie established, the judgment roll was clearly relevant, competent and admissible. Further in refusing to permit counsel to introduce evidence to attack the jurisdiction and validity of the judgment roll during the case in chief of defendant-in-error the trial court was merely exercising its discretion and we submit was following the better practice. The proper time and place for counsel to offer such evidence was in the presentation of their own case.

38 Cyc., 1352, 1353.

The remaining assignments of error in the first division, numbered "4", "5" and "6" are as obviously untenable as those we have just considered. Counsel objected to the introduction into evidence of the exemplified copies of the notice of appeal from the judgment, the notice of appeal from the order denying a new trial, the order of the Supreme Court of the State of California transferring the appeal to the District Court of Appeal for hearing, and the orders of the District Court of Appeal affirming the judgment and order denying a new trial and denying a rehearing. The objection in each instance was that these records were incompetent, irrelevant and immaterial. If so, of course no harm resulted in their admission. But it is well settled law that a judgment is not admissible in evidence and that an action cannot be maintained on a judgment until it is final and under the law of both California and Alaska a judgment is not final and the action is still pending until the time to appeal from the judgment has expired or, if an appeal has been taken, until the judgment has been affirmed.

Cal. Code Civil Procedure, Sec. 1049;

Compiled Laws of Alaska, (1913) Sec. 1315;

Sewell v. Price, 164 Cal. 270.

It was therefore not only proper but necessary for defendant-in-error to show that though an appeal had been taken by plaintiff-in-error to the Supreme Court of California from the Superior Court of the City and County of San Francisco, that

after due and regular proceedings the judgment had been affirmed by the District Court of Appeal of California on August 7, 1914, and that the judgment was final at the date of the commencement of this action in the District Court of Alaska.

The remaining forty-six alleged errors are comprised in what we have denominated the second division of the assignment of errors and we believe have as little merit as those in the first division. These forty-six exceptions are again naturally divisible into two classes. The first class, which we shall call "Subdivision A", comprises those assignments of error based upon the exclusion by the trial court of evidence offered by plaintiff-in-error to show that the plaintiff-in-error at no time owned any property in California, nor was doing any business in that state, nor ever had appointed any agent in California with authority to accept process nor complied with the laws of California governing foreign corporations doing business in that state. The second class, which we shall call "Subdivision B", embraces those assignments of error predicated on the exclusion by the lower court of evidence offered by plaintiff-in-error to show that the board of directors of the Blue Goose Mining Company never authorized Messrs. Fink and White, attorneys at law, to represent and appear for plaintiff-in-error in the action brought in San Francisco by the Northern Light Mining Company against the Blue Goose Mining Company, nor that the board of directors ever authorized Jafet Lindeberg, their

president, to employ counsel to appear for the company in that action. "Subdivision A" embraces the assignments of error numbered 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 23, 24, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 49, 50, 51. "Subdivision B" is composed of the assignments of error numbered 12, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 32, 44, 45, 46, 47, 48.

Counsel state in their brief (page 26) that

"the position taken by the court below as shown by its ruling on the evidence, as being not competent, was that the judgment roll was conclusive on all recitals therein, including jurisdiction".

And again at page 51 in their brief counsel say that

"the court below, as we have suggested, tried this case upon the theory that the record of the judgment of the California court imported absolute verity in all respects, including jurisdiction. Upon that theory only could it have given an instruction to the jury to return a verdict for the defendant in error, which instruction we also assign as reversible error. In fact we submit that the record in this case is a tissue of errors based upon the false theory of the case adopted by the court below upon the suggestion of the defendant in error."

With this conception of the theory upon which the lower court tried this case counsel have prosecuted this appeal and in their brief at page 22 state that the alleged errors of the trial court in ruling on the evidence

“embrace two propositions of law, the answers to which we submit are controlling in this case.

“First. Are the recitals in the record of a judgment obtained in a sister state against a foreign corporation conclusive, when sued upon in the domicile of the judgment debtor?

“Second. Where an attorney professes to appear and represent such foreign corporation in defending such action, does that render the judgment binding upon it in the absence of service of process or may his lack of authority be shown in the subsequent action on such judgment?”

Counsel then devote all of their brief and concentrate all their efforts in establishing that by the weight of authority the first proposition must be answered in the negative and that as to the second of these propositions unquestionably the attorney's lack of authority may be shown.

We have no quarrel with counsel's statement of the law on these two propositions. We agree, and so did the trial court herein, with the statement made by Judge Andrews in *Vilas v. Plattsburgh etc. R. R.*, 123 N. Y. 440 (quoted with approval by the United States Supreme Court in *Cooper v. Newell*, 173 U. S. 555, and by counsel at page 45 of their brief) that

“it is well settled that in an action brought * * * on a judgment of a court of a sister state, the jurisdiction may be assailed by proof that the defendant was not served and did not appear in the action, or where an appearance was entered by an attorney that the appearance was unauthorized, and this even where the proof directly contradicts the record”.

But though we agree with counsel's statement of the law covering the above two propositions we do not for a moment concede, as counsel say, that the answers to these propositions "are controlling in this case" (Br. p. 22), or that the trial court committed any error in any of its rulings.

There is nothing paradoxical in this position. The trouble is that counsel for plaintiff-in-error have an entirely erroneous conception of the rulings and theory of the trial court. They are laboring under the impression that the lower court ruled on the theory "that the judgment roll was conclusive on all recitals therein, including jurisdiction" (Br. p. 26). Nothing could be farther from the truth. The trial court directed a verdict for defendant-in-error because under well settled law, Jafet Lindeberg, the president of the Blue Goose Mining Company, *by virtue of his office*, had authority to employ counsel to defend the company in actions brought against it without any special authorization from the directors, and the evidence of witnesses for the plaintiff-in-error itself conclusively demonstrated that Lindeberg had not been forbidden by the directors to employ counsel to defend this or any action, but, on the contrary, with knowledge of his action obtained while the California case was still pending they had acquiesced in his employment of counsel and ratified it by either paying or permitting him to pay counsel for their services out of the funds of the company. Evidence offered by counsel to show that the California court

could not have acquired jurisdiction over plaintiff-in-error by process because it had never done business in California, was excluded because it was immaterial *as long as the California court had acquired jurisdiction by voluntary appearance*. And whatever evidence was excluded relating to the authorization of Messrs. Fink and White to appear tended to show only that the board of directors had not themselves employed Messrs. Fink and White or expressly authorized Lindeberg to do so. Plaintiff-in-error never offered any evidence to prove that *Lindeberg had been forbidden by the directors to employ counsel*. If Lindeberg had the implied authority *by virtue of his office* to employ counsel, the fact that the board of directors had not *expressly* authorized him so to do was obviously immaterial. Whatever evidence offered by plaintiff-in-error was rejected by the trial court was excluded, therefore, not because the judgment roll “imported absolute verity in all respects, including jurisdiction”, but *because the evidence offered did not even tend to show that Lindeberg did not have the authority implied by law by virtue of his office to employ counsel and consequently did not even tend to rebut the presumption in favor of the California trial court’s jurisdiction arising from the appearance by Messrs. Fink and White*. Hence counsel’s dissertation on the effect to be given to the recitals in a foreign judgment, though interesting and in the main correct, is entirely inapposite on this appeal. We shall now turn our attention

to the forty-six assignments of error embraced in the Second Division (*supra*, p. 1) and shall devote our remaining space to showing that none of these assignments constitutes reversible error and that under the law and the facts the trial court was right in directing a verdict for the defendant-in-error.

Counsel took the position at the trial (Tr. p. 30) and have maintained it in their brief on this appeal (pp. 28, 40 and 41) that the judgment roll did not raise any presumption in favor of the jurisdiction of the California court by service of process because it does not appear affirmatively in the record that the Blue Goose Mining Company was engaged in business in California. They quote (Br. p. 40) from *St. Clair v. Cox*, 106 U. S. 350, in which it was said that

“when service is made within the state upon an agent of a foreign corporation, it is essential in order to support the jurisdiction of the court to render a personal judgment that it should appear somewhere in the record * * * that the corporation was engaged in business in the state”.

Counsel point out that in case

“where the record of the judgment (as here) failed to show that the judgment debtor was doing business in the state where service was made on its agent, the record was held properly excluded” (Br. p. 40).

We do not question the correctness of the law as laid down in *St. Clair v. Cox*, *supra*. If the judg-

ment roll does not disclose that the Blue Goose Mining Company was engaged in business in California then the jurisdiction of the California court could only be presumed from the appearance of Messrs. Fink & White and counsel admit (Br. pp. 41, 42) that the record is conclusive as to the fact of their appearance and that such appearance is "prima facie evidence of their authority to act". While the judgment roll was admissible, therefore, because of the presumption or jurisdiction arising from counsel's appearance no presumption of jurisdiction could be predicated on the recital of service of process in the absence of a recital that the Blue Goose Mining Co. had been doing business in California. There being no presumption in favor of jurisdiction by service of process of what relevancy was any evidence offered plaintiff-in-error to show that jurisdiction had not and could not be had over it by service of process? Proof that the Blue Goose Mining Company, admitted to be an Alaskan corporation, had never owned any property in California, had never done any business in that state, had never designated an agent in California upon whom services of process could be made, and had never complied with the laws of California relating to foreign corporation doing business in that state, could only be admissible to show that under such circumstances no jurisdiction over the corporation could be obtained by the California court through service of summons upon any officer of the company. But when defendant-in-error offers no proof

of service by process and there is no presumption in favor of it, then clearly any evidence offered by plaintiff-in-error is irrelevant, for defendant-in-error is confined to the appearance by Messrs. Fink and White to support the jurisdiction of the California court and the validity of the judgment. On counsel's own contention that the judgment roll did not raise a presumption of jurisdiction by service of process the trial court was right in excluding testimony rebutting a presumption that did not exist. We can therefore disregard as without merit all the assignments of error relating to this phase of the case which together comprise "Subdivision A" (see *supra*, p. 7).

On the other hand, if counsel reverse themselves and argue that the record does disclose on its face that the Blue Goose Mining Company was doing business in California, and that therefore the recital in the findings that the Blue Goose Mining Company had been regularly served with summons does show *prima facie* jurisdiction in the California court by service of process, the result is practically the same. True under such construction of the record most of the evidence excluded and covered by the assignments forming "Subdivision A" (p. 7) would be relevant. But the exclusion of such testimony could at the most be called harmless error, unless plaintiff-in-error also overcame the other presumption and proved that Messrs. Fink and White had no authority to appear on its behalf. It is immaterial whether the California

court obtained jurisdiction over plaintiff-in-error by service of process or by its voluntary appearance. In either case the judgment is valid and plaintiff-in-error must prove that Messrs. Fink and White appeared without authority before it can claim reversible error in the exclusion by the trial court of proof that there was no valid service of process. Hence, whether or not the judgment roll imports prima facie jurisdiction by service of process none of the assignments embraced in "Subdivision A" (supra, p. 7) is reversible error and they can be disregarded.

However, before leaving entirely this phase of the case there is one contention made by counsel that might be noticed, though it seems utterly without merit. Apparently counsel would make Lindeberg's authority to employ counsel solely dependent on whether or not the Blue Goose Mining Company had owned property in California, had been doing business there and had designated him as the agent in California upon whom process could be served by the courts of that state. Counsel say:

"We were, through the ruling of the court below, denied the right to show the lack of authority of J. Lindeberg to act as the agent of the Blue Goose Mining Company in the State of California, or to accept service of process or to appear and defend any action in its behalf. We were denied the right by the rulings of the court below to show that the Blue Goose Mining Company did not hold property in the State of California.

* * * It would seem to require no argument that if Lindeberg was not such a person

upon whom process could be served, or who could accept service or appear in such action on behalf of the Blue Goose Mining Company * * * then he would have no authority to employ attorneys. * * *"

We seldom have met a more sophistical argument or a more complete *non-sequitur*. Let us assume that the Blue Goose Mining Company never did engage in any business in California, nor ever owned any property there, nor ever designated Lindeberg or any one else as a person upon whom service of process could be made as required of foreign corporations in California by Section 405 of the Civil Code. Will counsel argue that under such circumstances the Blue Goose Mining Company could not, if it so desired, voluntarily appear in an action pending against it in California? Could not the board of directors by resolution regularly adopted authorize and direct its president, Jafet Lindeberg, to employ counsel to appear on behalf of the corporation in that action? Obviously, yes. Yet the corporation would not be doing any business in the state or owning any property there, nor would Lindeberg be an agent designated to accept service by process pursuant to Section 405 of the California Civil Code. And if Lindeberg could have such authority by express resolution of the board of directors could he also not have it, in the absence of any resolution of the board to the contrary, if the law clothed him with it by virtue of his office? And even though he did not

have the implied authority to employ counsel could not the board of directors by acquiescence after knowledge or by paying the attorneys for their services approve and ratify the act of their president?

Clearly the trial court was right in taking the position that whether or not the plaintiff-in-error was engaged in business in California or had designated an agent there upon whom service of process could be made was a matter that had no material place in this case. The lower court admitted the judgment roll because the presumed authority in Messrs. Fink and White to appear gave the California court *prima facie* jurisdiction. Unless that presumption was overcome judgment would have to go for defendant-in-error. And while proof that the Blue Goose Mining Company had never done business in California nor owned property there, nor designated an agent there to accept process might overcome a presumption in favor of jurisdiction by *service of process* it could not derogate from the implied authority and power to employ counsel with which the trial court held the law had invested Lindeberg by virtue of his office as president and general manager.

Since the assignments grouped under "Subdivision A" should be totally disregarded as concerning irrelevant and immaterial issues, we shall now turn our attention to the remainder of the assignments of error which we have classified as "Subdivision B". These assignments are those numbered

12, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 32, 34, 44, 45, 46, 47 and 48 (see *supra*, p. 7). They relate to excluded evidence offered by plaintiff-in-error to prove that the board of directors of the Blue Goose Mining Company had never themselves employed Messrs. Fink and White, nor had ever authorized Jofet Lindeberg to employ any attorney to appear for plaintiff-in-error in the action pending against it in California. This evidence had been offered pursuant to counsel's theory that Jofet Lindeberg, as president of the corporation, had no authority to employ counsel unless expressly authorized to do so by the board of directors.

It will be apparent from a cursory examination of these assignments that the interrogatories covered by most of them were incompetent. The court, for instance, sustained objections to the following question put to Jofet Lindeberg (Assignment No. 46, Tr. p. 155) :

“Had you any authority from the defendant *as President or otherwise*, to appear in the action brought by the plaintiff herein in the State Courts of California, or to employ counsel therein to defend such action?”

Obviously this question is improper as it calls for the conclusion of the witness and indeed his opinion on a question of law. And it will be found that the questions involved in assignments numbered 12, 20, 25, 28, 32, 34, 44, 45, 46, 47 and 48, merely reiterate the above question in practically the same language and are all subject to the same vice.

The remaining assignments numbered 18, 21, 22, 26 and 29, all relate to the same matter and are repetitions, in about the same form, of the question covered by Assignment No. 21:

“Q. Since you have been a member of the board of directors did the board of directors authorize the employment at any time of Messrs. Fink and White or other counsel to represent the defendant or appear for the defendant in the case in question?” (Tr. 131.)

By this question and the similar ones involved in the other above enumerated assignments counsel endeavored to show that the board of directors had not by any *express* resolution authorized Lindberg or anyone else to employ Messrs. Fink and White. These questions, outside of other grounds, were objectionable as not calling for the best evidence which was available. Counsel for defendant-in-error repeatedly objected to these questions on that ground and the objection was sustained (Tr. pp. 133, 147). Indeed Mr. Stevenson, secretary of the Blue Goose Mining Company, testified:

“Nothing was brought up at our meetings except what is shown in the minutes, there was nothing orally transacted.”

In face of such testimony clearly the minutes were the best evidence and the objections to the questions were properly sustained.

Furthermore, these questions were irrelevant and immaterial. As we shall establish hereafter, Lindberg by virtue of his office as president and his authority as the “general executive officer of the

corporation" (Tr. p. 126) had the power and authority to employ counsel to defend actions brought against the company unless forbidden to do so by the directors. But he did not need their express authorization to clothe him with that power for it was already implied. As said by the court in a similar case—*Beebe v. Beebe Co.*, 46 Atl. 169:

"The suggestion that it requires a resolution of the board of directors to authorize an attorney to represent a corporation in our courts is equally unsubstantial. The president, as the chief executive officer of a corporation, has authority *virtute officii*, to take all steps necessary for the defense of his company in litigation in which it may be involved, including the employment of an attorney for this purpose. Not even a suggestion to the contrary can be found in the books."

Proof that the board of directors had expressly forbidden such employment by the president would be pertinent, but the fact that the directors had not expressly directed him to employ counsel clearly could not derogate from the implied power to engage attorneys belonging to him as the "general executive officer of the corporation" (By-Laws, Sec. 3, Tr. p. 126).

But even though the evidence involved in and covered by the above assignments (subdivision B) were competent and relevant no harm has been done by its exclusion. As previously stated by these questions counsel sought to establish that the board of directors had not expressly authorized Lindeberg to employ counsel to appear in the action pending in California. But counsel for

plaintiff-in-error were permitted to introduce into evidence the minutes of the board of directors which failed to disclose any action by the board of directors relating to the action in California or the employment of counsel therein. In view of the testimony of Mr. Stevenson (*supra* p. 18) that the minutes showed everything that the directors had done, if any of the rulings complained of in the above assignments (subdivision B) were incorrect (which we do not believe) they were cured by the admission of the minutes in evidence.

We now come to the last and most important question. Was the trial court justified in directing a verdict for defendant-in-error? In discussing this question we shall try to look at the case for plaintiff-in-error in its strongest and most favorable light. Let us assume, as counsel has consistently maintained, that there is no presumption or proof that the California court ever acquired jurisdiction over the plaintiff-in-error by service of process and that the validity of the judgment roll depends on the authority of Messrs. Fink and White to appear in the action. Let us also assume that the board of directors of the Blue Goose Mining Company never expressly authorized or directed Lindeberg to employ counsel or to appear and defend in the action in California. It may also be assumed that the directors Bachelder, Cole, Stevenson and Lomen did not know of the pending action in California prior to March 22, 1912, the date in which judgment was entered in the Superior Court. Assuming all these facts in favor of plaintiff-in-error, was the directed verdict justified?

It is our contention that the lower court was right in directing a verdict for the following reasons: First, that under the law Jafet Lindeberg, as president, had the authority by virtue of his office and without express authorization from the board of directors to employ counsel and defend the action; second, that even if this court thinks that he did not have such authority merely by virtue of his office as president alone, that the evidence shows that Lindeberg was also the "chief executive officer", the general manager of the corporation, and as such is universally held under the law to be clothed with the implied power, without express grant from the directors, of defending actions and employing counsel for that purpose; third, that the plaintiff-in-error and its directors are estopped from questioning the authority of Lindeberg to employ Messrs Fink and White because the evidence shows conclusively that after hearing and knowing about the action in California WHILE IT WAS STILL PENDING and of the action of their president in employing and authorizing Messrs. Fink and White to appear therein, they not only acquiesced in the proceeding but even paid these attorneys for their services out of the funds of the Blue Goose Mining Company. We will take these propositions up in their order.

We are aware that a number of authorities hold that the office of president itself confers no power to bind the corporation or control its property. However, as said by Machen in his leading work on corporations (section 1668),

“many authorities, on the other hand, *which are constantly increasing in number*, hold that he has presumptively by virtue of his position a general right of superintendence over the company’s affairs in the interim between meetings of the board of directors, and that his powers are presumptively those of a general manager of the business”.

The general trend of the authorities is toward a liberal construction as to the powers held by a president by virtue of his office. But no matter how the cases may differ as to the powers incidental to the office of president we believe that the power to defend actions against the corporation and employ counsel to that end is peculiarly inherent and characteristic of the office of president of a corporation.

Mr. Morse in his well known work on Banks and Banking (section 143), speaking on this very matter, says:

“Indeed, it is a singular fact that the entire collection of judicial authorities justifies the enunciation of only one act as falling within the properly inherent power of the president. This solitary function is to take charge of the litigation of the bank. There is no question that this matter belongs to him by virtue of his office. * * * He may appear, answer and defend in suits against the bank.”

Nor is there anything peculiar to the office of presidency of a bank, as the court says in *Pacific Bank v. Stone*, 121 Cal. 202, in speaking of this very quotation from Morse that should prevent the

above statement being applicable to the office of president of other corporations.

In *Streeten v. Robinson*, 102 Cal. 545, the court said that "the authority of the president, or other head of a corporation, to employ an attorney where the exigencies of his company require it has been repeatedly recognized".

Again in *Winfield Mortgage and Trust Co. v. Robinson*, 132 Pac. 979, it was said:

"In the absence of a contrary corporate provision, the president is empowered to employ counsel and to manage the litigation in which the corporation is interested. This is said to be one of the inherent powers of a president of a corporation, and it has also been held that, if the board of directors should employ counsel, it would not deprive the president of the power to employ other counsel and control the litigation."

It appears from the foregoing authorities that Jafet Lindeberg, as president of the Blue Goose Mining Company, had the implied power to authorize and employ Messrs. Fink and White to appear in the action in California without any special authorization from the directors. But in this case we are not limited merely to the powers inherent in the president of a corporation. The undisputed evidence establishes that Jafet Lindeberg in addition to being the president of the Blue Goose Mining Company was the "general executive officer of the corporation", its general agent or general manager, and indeed absolutely dominated the company. The right of Lindeberg

to prosecute or defend suits for the corporation, without express authorization from the directors, is under such circumstances well established.

10 Cyc., 928.

In their brief counsel have quoted from the by-laws in support of their contentions, though the by-laws were not admitted in evidence. And that the trial court was right in excluding the by-laws is so well settled as to require little citation of authority.

10 Cyc., 351, 352, 925, and cases cited.

However, since counsel has treated the by-laws as though they were in evidence we will do the same. We cannot understand how counsel can rely upon these by-laws as showing no authority in the president to employ counsel. To us they conclusively establish the fact that Lindeberg was the general agent, manager and executive officer of the corporation. The by-laws provide:

“The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and stockholders, shall prepare and present at each annual stockholders’ meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all the duties usually appertaining to the offices of president of a corporation. HE SHALL HAVE GENERAL CHARGE (subject to the control of the board of directors) OF THE BUSINESS AFFAIRS OF THE CORPORATION, may sign and endorse bonds, bills, checks and promis-

sory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power without the previous consent of the board of directors to incur any debt on behalf of the corporation in excess of the sum of five hundred dollars, or without such consent to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the directors advised as to the affairs of the corporation."

We could ask for no better proof of the fact that Lindeberg was the general agent and executive officer of the company than this by-law. Counsel says (Br. p. 50): "It will be seen that he is to 'have general charge (*subject to the control of the board of directors*) of the *business affairs* of the corporation'. And it is expressly provided that 'he shall have no power *without the previous consent* of the board of directors to incur *any debt on behalf of the corporation in excess* of the sum of *five hundred dollars*, or *without such consent*, to bind the corporation by any obligation involving a liability *in excess* of such sum'."

Counsel seem to get comfort in the parts of this by-law which they have italicized, but we can see little help to them there. They argue that "while he (Lindeberg) had *general charge* of the business of the corporation such charge was *subject to the control* of the board of directors". Is it not true that every general agent, no matter how wide and extensive his powers may be, is subject to the control of the directors? And until the directors

exercise this control, has not Lindeberg, as president, the general charge and management of the business? And have not counsel by putting the minutes into evidence proved that the board of directors never did exercise any control or forbid Lindeberg from defending suits and employing attorneys? As for the provision in the by-laws limiting the president's power to incur indebtedness to five hundred dollars, of what comfort or pertinency is that since the fee of Fink and White amounting to one thousand dollars HAS BEEN PAID *from funds of the corporation with the consent of the directors?* (Tr. p. 159.)

We submit that this by-law conclusively shows Lindeberg was both president and general manager of the corporation. Indeed the power given to him to execute "bonds, bills, checks and promissory notes on behalf of the corporation" is a greater power than is usually given to general agents of corporations. As stated in 10 Cyc. 929: "Generally speaking the managing agent of a corporation, other than the cashier of a bank, has no implied power to bind the corporation by making, accepting, or indorsing negotiable paper." Yet Lindeberg had this authority and in addition could borrow money, execute written contracts of the corporation, preside over corporate meetings, could perform all duties usually appertaining to the office of president of a corporation, was the general executive officer of the company with general charge of the business affairs of the corporation. It is

difficult to think of any power usually held by a general agent and manager that was not granted to the president by these by-laws.

If anything further were needed to show the general authority and extensive powers held up Lindeberg it can be found in the way the company has been conducted. Less than 300,000 shares out of a total capital stock of 500,000 shares in the Blue Goose Mining Company have been issued (Tr. p. 150). Of these 300,000 shares 156,656 stood in the name of Lindeberg so that he controlled the corporation (Tr. p. 139). Of the remaining directors, Stevenson, Bachelder and Lomen each held 10 shares and Cole had 18,750 shares (Tr. p. 143). Apparently Lindeberg absolutely dominated and dominates the directorate. He has been the president of the company continuously since August, 1910 (Tr. p. 112). Stevenson is in the employ of the Blue Goose Mining Company (Tr. p. 137), Lomen is its attorney and Bachelder is employed in the summer time, at least, by the Pioneer Mining Company of which Lindeberg is the president (Tr. p. 105). The business of the corporation has been left entirely in Lindeberg's hands as is obvious from the fact that between August 1, 1910, and October 21, 1912, only one directors' meeting was held and at that meeting on September 27, 1911, nothing was done but electing officers for the ensuing year. The Blue Goose Mining Company was run as a sort of subsidiary to the Pioneer Mining Company of which Lindeberg is the chief

officer (Tr. p. 159). Lindeberg testified that he held his 155,656 shares in the Blue Goose Mining Company as trustee for the Pioneer Mining Company. Even the books of the Blue Goose Mining Company were kept by an employe of the Pioneer Company (Tr. p. 107). And what could be more illuminative as to the control and power exercised by Lindeberg over the Blue Goose Mining Company than the following extract from his testimony on cross-examination:

“Q. And you paid them (Fink and White), did you?

A. I have paid them, yes, sir.

Q. Out of your own funds, or the Blue Goose Mining Company's funds?

A. I think I paid them out of the Pioneer Mining Company's funds to begin with.

Q. And charged it up to the Blue Goose Mining Company, of course?

A. I think so, yes, sir.

Q. So the Blue Goose Mining Company really paid counsel?

A. I think so, yes, sir.

Q. A thousand dollars at one time?

A. I believe that was charged to the Blue Goose Mining Company either in 1914 or 1915, if I remember right.

Q. Well, a thousand dollars at one time you paid them?

A. I think that was the fee.

Q. The Pioneer Mining Company paid it of which you were the chief officer, and you afterwards charged it to the Blue Goose Mining Company?

A. I think that was the way it was done. The books will show it.”

We submit that with these by-laws and this evidence before us, there can be but one conclusion and that is that Jafet Lindeberg has been since August, 1910, not only the president of the Blue Goose Mining Company but also its general and managing agent.

The law is well established that “managing officers and agents of corporations have power to employ attorneys and counselors to prosecute or defend suits for the corporation, or otherwise to assist in legal proceedings in which it is interested, without any express delegation of power so to do, or any formal resolution of the board of directors to that effect”.

10 Cyc., 928;

Luce v. San Diego Land Co. (Cal.), 37 Pac. 390;

American Ins. Co. v. Oakley, 9 Paige (N. Y.) 496; 38 Am. Dec. 561;

Southgate v. Atlantic R. Co., 61 Mo. 89;

Western Bank v. Gilstrap, 45 Mo. 419;

Lewis v. Pulitzer Pub. Co., 77 Mo. App. 434;

Mumford v. Hawkins, 5 Den. (N. Y.) 355;

Dallas Ice Factory Co. v. Crawford, 44 S. W. 875;

R. Co. v. Ackerman, 59 S. E. 10;

Beebe v. Beebe Co., 46 Atl. 169.

Many more cases to the same effect and statements by leading writers could be produced but the law is so well established on this proposition as not to require exhaustive citation of authority.

We believe we have demonstrated that Jafet Lindeberg was the president and general manager and executive officer of the Blue Goose Mining Company and as such possessed of authority to defend the action in California without express authorization from the board of directors.

But even assuming that Jafet Lindeberg did not have the power to employ counsel without the express authority of the directors, the evidence shows, we think, that the plaintiff-in-error is estopped from now questioning his authority and, indeed, shows that the directors ratified his act.

There is one interesting and curious coincidence about the testimony of the directors of the Blue Goose Mining Company relating to the time when they first heard of the action in California. All without exception could not place the date with any degree of accuracy but they were all certain that it was after March 22, 1912, when the judgment was entered in the Superior Court in California. We have put from our mind as unworthy the thought that perhaps the dictum in *Citizens Bank v. Brooks*, 23 Fed. 21, cited by counsel, that ratification after judgment may be ineffective, had refreshed the memories of the directors as to this date. Apparently, at any rate, they all learned about it shortly after the judgment was rendered. Mr. Cole says he knew about it in the fall of 1912 (Tr. p. 113); Mr. Lomen says he first learned of the case in the summer of 1912 (Tr. p. 129); Mr. Stevenson says he did not hear of it prior

to March 22, 1912 (Tr. p. 147) but tells us nothing more definite; and Mr. Bachelder's testimony is to the same effect.

Now under the law of California and Alaska a judgment is not final and the action is deemed to be pending until the time for appeal has expired, or, if an appeal has been taken, until the judgment has been affirmed (*supra* p. 5).

Cal. Code Civil Proc., Sec. 1049.

Compiled Laws of Alaska (1913), Sec. 1315.

Sewell v. Price, 164 Cal. 270.

An appeal having been taken from the judgment of the Superior Court, as shown by the judgment roll, the action was pending until the judgment was finally affirmed in October, 1914.

By their own admissions the directors of the Blue Goose Mining Company knew of the action pending in California at least two years before the judgment was affirmed by the appellate court and while the appeal was still undecided. During these two years did the directors call upon Lindberg to account for his unauthorized and inexcusable act in voluntarily appearing on behalf of the corporation in the California case? One would naturally expect some such action from the indignant directors. But strange to say nothing was done. As Mr. Cole testifies "the matter of this suit was never brought up at any time before the directors at their meetings". He knew about the case "in the fall of 1912 and went to the meet-

ings of the stockholders each meeting and did not say anything about this suit”.

Now of course a judgment of \$15,000 may not seem large to some corporations, but it is difficult to reconcile the apparent serenity of the directors to this adverse judgment with the anger and indignation that would be expected to dominate them on hearing of the unauthorized act of Lindeberg and its result. Since G. J. Lomen, the general counsel, was also a director, it would seem reasonable to suppose that he would have advised the directors that the appearance of Fink and White was unauthorized and that the California court never acquired jurisdiction. If Lindeberg exceeded his authority in defending the California case that fact was surely as well known in 1912 as it was in 1916. And would it not be right to expect that the directors, acting in good faith, as soon as they learned of the unauthorized act of their president, would in the interest of themselves and their stockholders,—not to speak of the California courts and the defendant-in-error who had also been imposed upon—at once specially appear in the California courts and move to vacate the judgment for lack of jurisdiction.

But nothing of the sort was done. The directors preferred to adopt a policy of “watchful waiting”. If the appellate court reversed the judgment as no doubt the directors on the advice of their counsel expected, then all was well. If not,—then there would still be an opportunity to raise the point

on any suit on the judgment in Alaska. Whether it was in pursuance of this apparent policy that the method of paying the fee of Fink and White testified to by Lindeberg (*supra* p. 159) was adopted, of course, we do not know. It certainly looks suspicious that the fee should be paid by the Pioneer Mining Company and not charged to the Blue Goose Company until 1914.

Plaintiff-in-error cannot escape the fact that its payment of the fee charged by Fink and White was a ratification of the employment, even assuming it was originally unauthorized. The proposition is too plain for argument. And it cannot be said that the directors did not know of or acquiesce in the payment of this fee for the evidence shows that the books of the company disclose the payment (*Tr.* p. 159). And it must be presumed that the directors were doing their duty and keeping track of the corporation's business.

Nor can the time of the payment of this fee make any difference as long as the ratification took place, as it did, prior to the commencement of this action. Lindeberg stated that the fee was charged to the Blue Goose Mining Company in 1914 or 1915, though actually paid to Fink and White before that. There is nothing to show whether the fee was paid before or after the affirmance of the judgment in October, 1914. But in either event the result is the same. Even though the appearance of counsel was entirely unauthorized, the acceptance of the benefit of their services

and the payment by the company of a fee for the same, even though paid after judgment entered, would confirm the jurisdiction and validate the judgment.

Ryan v. Doyle, 31 Iowa 53;

Robb v. Vos, 155 U. S. 13;

Mass. Const. Co. v. Kidd, 142 Fed. 285.

Further, plaintiff-in-error is estopped from now questioning the authority of Lindeberg to employ counsel and defend the California action. The testimony of the directors themselves established that they became aware of the litigation in California while it was still pending, and indeed two years before the judgment became final. They took no action to terminate the employment but allowed Fink and White to continue to represent the corporation in the California appellate court and to write and file briefs in the case in that court. They even had Messrs. Metsom, Drew and Mackenzie, who appear as "of counsel" for plaintiff-in-error herein file a petition for rehearing on August 27, 1914, in the District Court of Appeal. And thus new counsel was brought into the case in 1914. For two years plaintiff-in-error permitted Fink and White to innocently continue perpetrating a fraud on the appellate court by appearing for a party without authority. They permitted defendant-in-error to go to great expense in the employment of counsel and the usual costs of an appeal and they permitted the appellate court to devote time and labor in consideration of an appeal

from an apparently valid judgment. During an interim of two years and more they took no steps to disavow the alleged unauthorized act of their president. They quietly waited to see if the judgment would be reversed. And now in this action for the first time they claim that Lindeberg had no authority to appear and that the judgment is void. The law will not permit such practice and has uniformly declared that under such circumstances the corporation will be estopped from denying the authority of its officer and agent.

In *Salem Iron Co. v. Lake Superior Consol. Iron Mines*, 112 Fed. Rep. 239, the court laid down the law as follows:

“Moreover, if a contract within the power of that corporation to make * * * be made by the president or an executive committee, assuming to act for the company, but without express authority to so contract, it is the duty of the directors of the company, upon receiving notice of such contract having been made, to promptly disavow the same as binding upon the corporation; and, in case they fail to do so within a reasonable time, the law will hold them to have ratified the contract, and allow it to then become binding upon the company. The law does not * * * permit a delay * * * to enable the company to speculate upon the chances of deciding profitably, after a lapse of time, as to whether or not they will disavow and refuse to accept the contract.”

See also

Brown v. Crown Gold Milling Co. (Cal.),
89 Pac. 86;

De Forest v. Northwest Townsite Co., 84 Atl. 674;

Wehrung v. Portland Country Club etc., 120 Pac. 747, and see 10 Cyc. p. 913 and cases cited.

In conclusion we believe that all of the assignments of error presented by plaintiff-in-error are without merit. We think that the trial court instead of trying the case upon a false theory, as charged, properly excluded the evidence that related, as we have shown, to irrelevant and immaterial issues. The evidence certainly demonstrates that Lindeberg was not only the president but also the general manager and executive officer of the corporation and as such under the law he unquestionably had the authority to engage counsel and appear and defend in the action in California on behalf of plaintiff-in-error. And even though it be assumed in face of all evidence to the contrary that Lindeberg exceeded his authority, still it has been proven out of the mouths of the president and directors themselves that the plaintiff-in-error knowingly allowed Fink and White to represent them in the action pending in California for two years without making any effort to disavow the act of the president in employing them but on the contrary paid these attorneys a fee of \$1000 for their services. We submit that this appeal is without merit and that as a proper decision in this case the language in the following opinion rendered *by this court* in the case of Owyhee Land

and Irr. Co. v. Tautphas, 121 Fed. Rep. 343, could well be used:

Ross, Circuit Judge: "There is no merit in this appeal. * * * A corporation, on whose behalf a contract has been executed by its president, cannot be allowed to question its validity after its full performance by the other party thereto, the acceptance of its benefit, and repeated recognition of its binding character by the payment by the corporation of a large part of the consideration for the work done thereunder. Such acts constitute a complete ratification, even if the contract was originally unauthorized. * * * The *judgment is affirmed with 10 per cent thereon as damages for frivolous appeal.*"

Dated, San Francisco,
March 3, 1917.

Respectfully submitted,

IRA B. ORTON,

GEO. B. GRIGSBY,

Attorneys for Defendant in Error.

W. S. ANDREWS,
Of Counsel.

No. 2880.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT. 7

BLUE GOOSE MINING COMPANY, a corporation,
Plaintiff in Error,
vs.

NORTHERN LIGHT MINING COMPANY, a corporation,
Defendant in Error.

PETITION FOR REHEARING

O. D. COCHRAN,
G. J. LOMEN,
Attorneys for Petitioners.

METSON, DREW & MACKENZIE,
Of Counsel.

FILED
NOV 14 1917

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

BLUE GOOSE MINING COMPANY, a corporation, <i>Plaintiff in Error,</i>	}	No. 2880
vs. NORTHERN LIGHT MINING COMPANY, a corporation, <i>Defendant in Error.</i>		

PETITION FOR REHEARING.

Plaintiff in error respectfully petitions the Court for a rehearing of this cause and in support of its application urges the following:

The decision rendered by this Court is by its express terms predicated upon a *fact not proven in evidence*; a fact as to which all reference was excluded by the trial court, viz.: the fact that, as cited in the opinion, the President of plaintiff in error was the "general executive of the corporation" and that the President had "general executive authority."

If such were the proven fact there could be no question as to the right of the official in question to bind his corporation by appearance in defense of an action brought against it. If success of plaintiff in error were dependent upon controverting this elementary and incontrovertible rule of law this appeal could properly be characterized as frivolous. The legal propositions enunciated by the Court are as incontestably correct as, in our judgment, and we say it with all due respect, the statement of the essential fact upon which the legal conclusions are based is incorrect and without a shadow of support in the record.

This case properly concerns only the question of the power of a President of a corporation *as such* to appear in litigation for his corporation without any delegation of authority whatever from the Board and without any proof of his actual or ostensible relationship to the corporation as "the general executive" or "managing director" or "chief executive" or "executive officer" or "general manager" or other relationship to the corporation other than such as is in law and in fact implied within his status as President. There is not one word in the evidence indicating, directly or indirectly, that the President of plaintiff in error was anything but just plain President. There are no facts whatever to warrant the extension of the legal inquiry beyond the question as to the power of a President of a corporation

to appear in litigation on behalf of his corporation strictly *by virtue of his office as President*.

We most respectfully urge that the decision in this case plainly begs this question, as appears from the following quotations therefrom:

“Accepting this general rule the inquiry here is at once narrowed to determining whether by virtue of his official relationship to the corporation and under his authority conferred by the By-laws the President could employ counsel to appear in behalf of the Company. Our conclusion is that Lindeberg, as the ‘general executive of the corporation’ as President had power to employ counsel to defend the corporation unless forbidden to do so.”

“But the rule being that the President of a corporation with general executive authority has authority to employ counsel to appear in defense of an action against his corporation, and to manage the defense, omission to confer such authority is immaterial.”

The decision quotes the by-law of the corporation to the following effect: “The President shall be the general executive officer of the corporation” It is to be noted in the above quotation from the decision of this Court that the phrase “general executive of the corporation” is by this Court placed in quotation marks. Accordingly the assumption by this Court that the record shows that the President was the general executive of the corporation is apparently based upon the supposed efficacy of the by-law. If so, the Court has overlooked the fact that the by-law

is not in evidence. It was merely offered in evidence and rejected (Tr., 120 *et seq.*), and we take it that an offer to prove a fact to which no oath had been made can hardly be taken as proof of such fact. Nor would there be any force in the argument that as the by-law in question was offered by plaintiff in error it would be assumed against such plaintiff that upon a retrial such alleged by-law could be proven. There is no proof that this is the by-law and therefore no warrant for the conclusion that it could on a retrial be proven. Also it must be assumed that counsel for plaintiff in error in the lower court were entitled to limit the introduction of evidence on behalf of their client in view of the legal sufficiency and effect of the evidence admitted and were not required to submit all possible defenses on the theory that other and additional evidence might on a retrial be introduced. *Non constat* therefore but that such counsel in the lower court might, in case said by-law had been proven, have offered additional and other evidence.

If, on the other hand, it was not the supposed authority of the by-law upon which this Court based the statement that the President was the chief executive officer it must have been either upon some supposed evidence in the record to that effect (which an examination of the transcript will be found to be wholly lacking), or upon the legal proposition that there is implied in the bare office of President of a corporation the powers of a chief executive of the

corporation. If this is the legal conclusion intended to be stated in the Court's decision it is to be noted that there is no discussion thereof and no authorities cited thereon. The pertinency of which is made apparent by the citations and quotations from authorities below to the point that the President of a corporation, merely by virtue of his office, has no more power than any other director. On this the authorities seem to be practically unanimous. A few cases which at first reading do not seem to conform to this rule will, as pointed out by Mr. Thompson in his work on corporations (quoted below), be found to be cases where coupled to proof of his office as President was proof of some fact, as either that he has been designated as Managing Agent or that he has in one way or another acquired actually or ostensibly powers not inherent in his office as President.

The fundamental proposition, as pointed out by Mr. Thompson and supported by the authorities, is that the President, to wit, presiding officer, is the presiding officer of the Board of Directors. It is the Board of which he is President, not the corporation. He is not a representative of the corporation nor in any sense its managing agent nor in charge of its affairs nor entitled to act for or bind it in anyway other than as any other director might do.

The indisputable fact is, for the purposes of this appeal, that the President in this case had the powers inherent in his office, no more, no less. The incon-

trovertible rule of law is that a President of a corporation, by virtue of the powers inherent in his office, has no authority to act for his corporation in the prosecution or defense of litigation, which proposition is clearly enunciated by the authorities quoted at length below. The inevitable conclusion from which is that plaintiff in error is entitled to a rehearing.

On the above stated legal propositions, in addition to supplemental authorities plaintiff in error filed upon the oral argument, we beg to submit the following which are typical of the controlling and practically unanimous line of authorities.

Thompson on Corporations, Sec. 1454.

"It may be asserted as a general rule that the president, merely by virtue of his office, has no power as such. The fact that he is president gives him no implied power to bind the corporation, beyond that of any other director. The reasons for this are obvious from the functions of his office as already suggested. The directors themselves are the managing agents, and the mere fact that they select one of their number to preside at the meetings of the board, is not sufficient to transfer the power inherent in the directors to any particular person."

Thompson on Corporations, Sec. 1455.

"In the absence of an express delegation of power, or of acquiescence in his acts, or holding him out to the public, or where he is not entrusted

with the general management of the business, there are many cases holding that he has no implied authority to transact business or make contracts for the corporation. Thus, he has been held to have no implied power to perform the following acts or make the following contracts . . . institute actions on its behalf, or appear for the corporation in a pending action, or employ counsel."

Thompson on Corporations, Sec. 1458.

"It is difficult to reconcile the common business transactions and every-day experience of corporate dealings with the legal proposition that the president of a corporation has no power to transact its business. Yet there is practically no occasion for confusion, if certain underlying principles are kept in mind. It may be asserted here, and will be subsequently shown, that any general manager or superintendent has the power to transact the ordinary business of the corporation; in fact, the corporation by its board of directors may delegate to any person the management of the ordinary ministerial affairs of the corporation. It must be borne in mind also that the so-called president is the president of the board of directors, and not, as shown already, the representative of the corporation, or in any sense its managing agent. On the other hand, by a careful analysis of the cases, it will be seen, that the president has been held to have the power to bind the corporation, from the fact either that he has been designated by the board of directors as the managing agent, or that the directors have held him out as such agent or acquiesced in his act and course of dealing to the extent that they have led the public and persons dealing with him to believe that he was, in fact, the managing agent of the corporate business."

In *Mahone vs. Manchester & Lawrence Railroad Corporation*, 111 Mass. Rep., 72-75, it is said:

"No officer of a corporation, unless specially authorized, has power to bind the corporation, except in the discharge of his ordinary duties. This doctrine has been applied by the Supreme Court of the United States and by the Court of Appeals of New York to officers of such large and general authority as presidents and cashiers of banks. *Bank of United States vs. Dunn*, 6 Pet., 51; *United States vs. City Bank of Columbus*, 21 How., 356; *Hoyt vs. Thompson*, 1 Seld., 320. And this court has accordingly held that the president of a manufacturing corporation had no authority as such to begin an action in behalf of the corporation, or to bind it by his appearance in court. *Ashuelot Manuf. Co. vs. Marsh*, 1 Cush., 507; *Globe Works vs. Wright*, 106 Mass., 207, 216. See also *White vs. Westport Cotton Manuf. Co.*, 1 Pick., 215; *E. Carver Co. vs. Manufacturers' Ins. Co.*, 6 Gray, 214; *Markey vs. Mutual Benefit Ins. Co.*, 103 Mass., 78."

In *Pacific Bank vs. Stone*, 121 Cal., 202-206, the Court says:

"Appellant quotes from *Streeten vs. Robinson*, 102 Cal., 542, where it is said: 'The authority of the president or other head of a corporation to employ an attorney when the exigencies of his company require it has been repeatedly recognized.' (Citing, also, numerous other cases.) We have examined these cases beginning with *Pixley vs. Western Pac. R. R. Co.*, 33 Cal., 183, 91 Am. Dec., 623, and in no one of them is the doctrine laid down that the president of a corporation has by virtue of his office alone the power to bind

the corporation in a transaction like the one we have here. In all the cases, as was true in the case in 102 California, *supra*, the president or other head of the corporation was shown to have been the general business manager, or he had admitted relations to the corporation from which authority might be inferred; or there was specific knowledge and acquiescence brought home to the directors; or there was a general custom or usage proven that the president or other manager had exercised like powers with the consent and acquiescence of the directors."

In *Black vs. Harrison Home Co.*, 155 Cal., 121-126, it is said:

"It is an elementary principle of corporation law that the president of a corporation has no power merely because he is president to bind the corporation by contract. The management of the affairs of a corporation is ordinarily in the hands of its board of directors, and the president has only such power as has been given him by the by-laws and by the board of directors and such other power as may arise from his having assumed and exercised the power in the past with the apparent consent and acquiescence of the corporation. The general rule in this regard is stated in 2 *Cook on Corporations*, section 716, as follows: 'The President of a corporation has no power to buy, sell, or contract for the corporation, nor to control its property, funds or management. This is a rule which prevails everywhere, excepting possibly in the State of Illinois. It is true that the board of directors may expressly authorize the president to contract; or his authority to contract may arise from his having assumed and exercised that power in the past; or the corporation may

ratify his contract or accept the benefits of it, and thereby be bound. But the general rule is that the president cannot act or contract for the corporation any more than any other one director. (See *Alta Silver Min. Co. vs. Alta Placer Min. Co.*, 78 Cal., 629, 632 (21 Pac., 373); *Bliss vs. Kaweah etc. Co.*, 65 Cal., 502 (4 Pac., 507); *Salfield vs. Sutter etc. Co.*, 94 Cal., 546 (29 Pac., 1105); *Blood vs. La Serena etc. Co.*, 113 Cal., 221 (41 Pac., 1017; 45 Pac., 252); *Barney vs. Pfoor*, 117 Cal., 56, 58 (48 Pac., 987); *Northwestern etc. Co. vs. Whitney*, 5 Cal. App., 105, 108 (89 Pac., 981).)"

In *Rockefeller vs. Lamora*, 89 N. Y. Sup., 1-4, it is said:

"The office of president does not in itself confer power to bind a corporation or control its property. The president's power as an agent must be sought in the organic law of the corporation or in a delegation of authority from it, directly or through its board of directors, formally expressed, or implied from a habit or custom of doing business. 10 *Cyclopedia of Law & Procedure*, 903."

In *Titus & Scudder vs. Cairo and Fulton R. R. Co.*, 37 N. J. Law Rep., 98-102, it is said:

"In the absence of anything in the act of incorporation bestowing special power upon the president, he has from his mere official station, no more control over the corporate property and funds, than any other director. The affairs of corporate bodies are within the exclusive control of their boards of directors, from whom authority to dispose of their assets must be derived.

"The act of a president or other officer, unless

it is shown to pertain to his official duty, or to be within the scope of his employment, cannot be regarded as the act of the corporation, and is not binding upon it.

"If any authority is necessary upon a rule of law so well settled, it may be found by reference to *Angell & Ames on Corporations*, Secs. 297, 298 and 299."

In *Lyndon Mill Company vs. Linden Literary and Biblical Institution*, 25 Am. St. Rep., 783-784, it is said:

"A single trustee or director has no power to act for the institution which creates his office, except in conjunction with others. It is the board of trustees or directors only that can act. If the board of trustees or directors makes a president, trustee, or any other person its officer or agent to act for it, then such officer or agent has the same power to act, within the authority delegated to him, as the board itself. His authority is, in such case, the authority of the board."

Respectfully submitted.

O. D. COCHRAN,
G. J. LOMEN,

METSON, DREW & MACKENZIE,
Of Counsel.

No. 2880

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BLUE GOOSE MINING COMPANY

(a corporation),

Plaintiff in Error,

vs.

NORTHERN LIGHT MINING COMPANY

(a corporation),

Defendant in Error.

REPLY OF DEFENDANT IN ERROR TO PETITION OF PLAINTIFF IN ERROR FOR A REHEARING.

W. S. ANDREWS,

Attorney for Defendant in Error.

Filed this.....day of November, 1917.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

No. 2880

IN THE

United States Circuit Court of Appeals

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BLUE GOOSE MINING COMPANY

(a corporation),

Plaintiff in Error,

VS.

NORTHERN LIGHT MINING COMPANY

(a corporation),

Defendant in Error.

REPLY OF DEFENDANT IN ERROR TO PETITION OF PLAINTIFF IN ERROR FOR A REHEARING.

Plaintiff in error has asked this Court to grant a rehearing and reverse its decision herein on the sole ground that, in deciding that the president of a corporation, who is also its general executive officer, has the authority to employ counsel, this Court pointed out that the by-laws of the Blue Goose Mining Company expressly state that the "president shall be the general executive officer of the corporation". These by-laws not having been admitted into evidence by the trial Court, plaintiff in error assumes that there is no

evidence in the record to establish that Jafet Lindeberg was the general manager as well as the president of the Blue Goose Mining Company. Counsel state that the fact that Mr. Lindeberg was the general executive officer of the plaintiff in error is "without a shadow of support in the record". Yet in our reply brief herein (pages 27-30) we summarized a mass of evidence, excluding the by-laws, which conclusively demonstrates that Mr. Lindeberg was the general manager and indeed the "alter ego" of the Blue Goose Mining Company. And in asking this Court to reverse itself and hold that the appearance of counsel for plaintiff in error in the California action was unauthorized, counsel do not even mention the evidence proved out of the mouths of their own witnesses which establishes a clear ratification by the Blue Goose Mining Company of its president's act in employing attorneys and appearing in the California action, and which proves such a state of facts as would estop plaintiff in error in any court of justice from denying the authority of its president to act as he did.

Counsel now deny the right of this Court to consider the by-laws of the Blue Goose Mining Company set forth in the transcript, and question their authenticity. Speaking of these by-laws, counsel say:

"It was merely offered in evidence and rejected (Tr. 120 et seq.), and we take it that an offer to prove a fact to which no oath had been made can hardly be taken as proof of

such fact. Nor would there be any force in the argument that as the by-law in question was offered by plaintiff in error it would be assumed against such plaintiff that upon a retrial such alleged by-law could be proven. *There is no proof that this is the by-law* and therefore no warrant for the conclusion that it could on retrial be proven."

When we first read this astounding statement we could hardly believe our eyes. It passes belief that counsel could have the effrontery to themselves offer in evidence in the lower Court these by-laws of their client, incorporate them in the record on appeal, assign as error their exclusion and then assert in this Court that there is no proof that they actually are their client's by-laws and attempt to discredit them. In their assignment of errors (No. 19) which is signed by counsel for plaintiff in error, they say:

"The Court erred in sustaining the objection of the plaintiff to the introduction in evidence of the by-laws of the defendant corporation, the same being marked defendant's Exhibit 'B', for identification, and which are as follows:" (by-laws quoted).

Now counsel even assert that in the event of a retrial defendant in error might not be able to establish the authenticity of these by-laws, presumably because defendant in error might have to rely for proof on the testimony of the officers of plaintiff in error. Here is a naive confession! We can hardly conceive how counsel, officers of this Court, and one of whom is concededly a director

and general counsel of plaintiff in error, can reflect on their own integrity by questioning the authenticity of the by-laws for which they have stood sponsor.

As a matter of fact the record shows that the parties to this action *actually stipulated* at the trial to the authenticity of these by-laws, and they were excluded by the trial Court because they were not considered material. The record reads as follows (Trans. pp. 120, 121):

“MR. COCHRAN. We next offer in evidence the “by-laws of the Blue Goose Mining Company.

“MR. ORTON. We object to the offer as being “entirely incompetent for any purpose.

“THE COURT. I do not think that they are ad- “missible in this proceeding.

“TO which ruling of the Court the defendant “then and there duly excepted, and an exception “was allowed.

“MR. COCHRAN. Then I will have to read them “into the record. I offer to prove——

“MR. GRIGSBY. Have the offer in writing then.

“MR. COCHRAN. I offer in evidence the minute “book of the Blue Goose Mining Company. I “cannot make a proper offer until we get the sec- “retary or unless these gentlemen will waive this “technical objection.

“MR. ORTON. For the purpose of your making “that offer, I will admit that that is the original “and genuine minute book of the corporation. I “have already used it myself. I admit that the

“by-laws of the corporation are written there on
 “pages 3, 4, 5, 6, 7, 8, and 9 and concluded on
 “page 10 and certified to by the secretary on
 “page 11. I will also admit that the minute book
 “shows they were regularly adopted, but I object
 “to the evidence as being entirely incompetent. I
 “object to having them read. It is a document
 “and can be marked and identified, and don’t need
 “to be read. I am willing to substitute a copy
 “afterwards, you can have the original marked and
 “substitute a copy.”

This stipulation was accepted by counsel for plaintiff in error and the necessity of producing the secretary of the Blue Goose Mining Company to establish the authenticity of the by-laws was avoided. The trial Court excluded these by-laws on the theory that they were immaterial since any unknown limitation contained in them upon the powers of the president could not affect third parties, particularly in view of the authority which the corporation had held him out to the public as possessing. If the effect of these by-laws had been to limit the authority of the president this ruling would have undoubtedly been correct (10 Cyc., pp. 351, 352, 925, and cases cited). But properly construed, these by-laws, as we pointed out in our reply brief herein (pp. 24-27), and as this Court has stated in its opinion, actually establish that the president was the general executive officer of the corporation and as such, under well settled law conceded even by counsel, he had the authority

to employ counsel. The by-laws were therefore probably relevant. However, in view of the fact that these by-laws clearly establish the authority of Mr. Lindeberg to employ counsel, the only point in this case, plaintiff in error cannot be heard to complain of their exclusion.

“It is a rule of universal application that appellant cannot complain of errors which were favorable to himself.”

4 Corpus Juris, p. 916;

Bethell v. Mathews, 13 Wallace, p. 1; 80 U. S. 1.

With the authenticity of the by-laws established and the only point involved in action the power of the president to employ counsel, and that authority absolutely proven by these by-laws set forth in full in the record, why should this Court shut its eyes to such decisive evidence? Though properly authenticated the by-laws were excluded as being immaterial. The objection was practically a demurrer to the evidence, its truth being admitted. That this Court can and ought to consider this evidence seems so clear as to require no authority, but we cite a few that came readily to hand.

In the case of *Town of Babylon v. Darling*, (N. Y.) 100 N. E. 727, a patent was in the record on appeal though not included in the findings of the trial Court. Both parties, however had not questioned its authenticity and had used it as a found fact on appeal. The Appellate Court based its decision on this point and said that

“undisputed facts may be considered for the purpose of upholding the judgment”.

To the same effect are the following

Dyke v. Spargur, 143 N. Y. 651; 38 N. E. 269;

First. Nat. Bk. v. Simpson, 54 S. W. 506;

Bajohr v. Bajohr, 184 S. W. 76;

Whitman v. Heath, 71 S. E. 313.

In First Nat. Bk. v. Simpson, *supra*, it was said:

“It may be conceded that the effect of a demurrer, when interposed to plaintiff’s evidence in either an equity or law case, is to admit every material fact to be true which the evidence tends to prove, as well as every reasonable inference to be deducible therefrom (Healy v. Simpson, 113 Mo. 340; 20 S. W. 881; Leeper v. Bates, 85 Mo. 224; Patton v. Bragg, 113 Mo. 600; 20 S. W. 1059; Seitz v. Mitchell, 94 U. S. 580; 24 L. ed. 179), as well, also, as that when legal and competent testimony is shown to have been offered upon the trial of an equity case, *and excluded, which is incorporated in the bill of exceptions*, so that the Supreme Court can pass upon it, it may be considered on appeal or writ of error. (Hanna v. Land Co., 126 Mo. 1; 28 S. W. 652; Goodrich v. Harrison, 32 S. W. 661.)”

Further it should be noticed that though these by-laws were not allowed into evidence that counsel for plaintiff in error themselves in their opening brief herein treated them as before this Court and argued that they showed that the president’s act in employing counsel and paying them a fee of \$1000 was in excess of his authority. In this connection

we would specially call the Court's attention to pages 49 to 51 of the brief for plaintiff in error on file herein. It does not lie in the mouths of counsel to object to this Court considering the authentic by-laws of the Blue Goose Mining Company after they have themselves offered and relied upon them, and asked this Court to rule that these by-laws established that the president had no authority to employ counsel as he did.

Counsel for plaintiff in error repeatedly assert that there is no evidence in the record, other than the by-laws, to show that Mr. Lindeberg had the authority belonging to the general executive of a corporation. There is no excuse for these assertions for on pages 27 to 30 of the brief of defendant in error, to which we would respectfully call this Court's attention, we summarized a mass of testimony in the record which, without consideration of the by-laws, should convince any reasonable person that Mr. Lindeberg has been and still is the president, general manager of the Blue Goose Mining Company and dominates and controls it.

The fact that Mr. Lindeberg was the general executive of the corporation and under the law had the power to employ counsel is so well established by the record and by the authorities that this Court did not consider it necessary in its opinion to comment on the propositions that the plaintiff in error actually ratified its president's

act in employing counsel and that plaintiff in error is now estopped, in view of its conduct, to question his authority. These propositions are fully discussed by us in our reply brief at pages 30 to 37 and we respectfully request the Court's consideration of that discussion in connection with the petition of plaintiff in error for a reversal. The facts in this cause, in our view, show such a clear case of ratification and estoppel as to preclude any chance for a writ of certiorari. And that plaintiff in error will use any pretext, no matter how unmeritorious, to delay the payment of this judgment is clear from its past conduct. After fighting the claim of defendant in error through the Appellate Courts of California, and even after, upon the affirmance of the judgment, employing other counsel, Messrs. Metson, Drew and Mackenzie, to apply for a rehearing in the California District Court of Appeal, plaintiff in error has the effrontery to contend that it never employed counsel in the California case and now even seeks to discredit its own by-laws offered in evidence and used and relied upon by its own counsel herein.

In view of such a course of conduct we respectfully ask this Court to find, as the facts warrant, that not only was Mr. Lindeberg, the president and general manager of the Blue Goose Mining Company, but that plaintiff in error ratified his act in employing counsel and appearing in the California action and that plaintiff in error is now

estopped, in view of its conduct, from questioning that act of its president.

We would respectfully ask that the petition of plaintiff in error for a rehearing be denied.

Dated, San Francisco,

November 19, 1917.

W. S. ANDREWS,

Attorney for Defendant in Error.

